DOCUMENT RESUME

ED 222 595 UD 022 550

AUTHOR Tomasi, Lydio F., Ed.; And Others
TITLE In Defense of the Alien. Volume IV. U.S. Immigration Today. Proceedings of the Annual National Legal Conference (Washington, D.C., March 26-27, 1981).
INSTITUTION Center for Migration Studies, Inc., Staten Island, N.Y.
REPORT NO ISBN-0-913256-59-5
PUB DATE 82
NOTE 125p.; Not available in paper copy due to institution's restrictions. For related documents, see UD 022 547-549.

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Civil Liberties; Economic Factors; *Federal Legislation; Humanitarianism; *Illegal Immigrants; *Immigrants; Law Enforcement; *Migrant Employment; Migration; Political Influences; Public Opinion; *Public Policy; Quotas; Refugees; Social Influences; Social Services
IDENTIFIERS Amnesty; Deportation; Immigration and Naturalization Service; *Select Commission Immigration Refugee Policy

ABSTRACT

This volume presents viewpoints of government representatives, legal experts, economists, and private sector representatives on recommendations for reforms in U.S. immigration policy and legislation submitted to the President and to Congress by the Select Commission on Immigration and Refugee Policy. Included are: (1) a report of issues considered in formulating the Commission's recommendations; (2) how the Commission dealt with deportation and exclusion policy; (3) a personal view of the Commission's operations and shortcomings; (4) criticism of the Commission report as lacking data-based analysis and understanding of the determinants of migration to the United States; (5) critiques of recommended immigration selection and restriction procedures; and (6) analyses of the implications of the proposed changes for Federal agencies, civil liberties exponents, the Mexican American Legal Defense and Education Fund, organized labor, local government, the private sector, and others. Authors include Lawrence H. Fuchs, Sam Bernsen, Peter A. Schey, Rose Matsui Ochi, John E. Nahan, Cornelius D. Scully, III, Karen M. Deasy, Austin T. Fragomen, Jr., Roger L. Conner, Lindsay Grant, David Carliner, Antonia Hernandez, Julian L. Simon, Jay Mazur, Carol Bellamy, and Grace Montanez Davis. (MJL)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

ED222595

U.S. DEPARTMENT OF EDUCATION
NATIONAL INSTITUTE OF EDUCATION
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

✓ This document has been reproduced as received from the person or organization originating it.
☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official NIE position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL IN MICROFICHE ONLY HAS BEEN GRANTED BY

M. Sullivan
CMS

TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

IN DEFENSE OF THE ALIEN

VOLUME IV

U.S. Immigration Today

Proceedings of the 1981
Annual National Legal Conference
March 26 and 27, 1981
Co-sponsored by the
Center for Migration Studies of New York
and the
World Peace Foundation

Edited by
Lydio F. Tomasi, Austin T. Fragomen, Jr.
and Rosemarie Rogers

1982
Center for Migration Studies
New York

UD 022550

The Center for Migration Studies (CMS) is an educational non-profit institute founded in New York in 1964 to encourage and facilitate the study of sociological, demographic, historical, legislative and pastoral aspects of human migration and ethnic group relations. CMS organizes an annual national legal conference on immigration and refugee policy, the proceedings of which are published regularly in a volume series entitled **IN DEFENSE OF THE ALIEN.** *This text represents the fourth volume of that series.*

The World Peace Foundation is a non-profit research educational operating Foundation in international affairs established in 1910 by Edwin Ginn, founder of the Ginn Publishing Company. Publisher of the authoritative quarterly, **International Organization,** *the Foundation's central interests have for several decades focused on multilateral intergovernmental and transnational relations, and U.S. relations with Canada.*

IN DEFENSE OF THE ALIEN
Volume IV
U.S. Immigration Today
First Edition

Copyright © 1982 by
The Center for Migration Studies of New York, Inc.
All rights reserved. No part of this book may be reproduced without permission from the publisher.

Center for Migration Studies
209 Flagg Place
Staten Island, New York 10304

ISBN 0-913256-59-5
Library of Congress Catalog Card Number 82-70230
Printed in the United States of America

Contents

Introduction by: *Lydio F. Tomasi*
Austin T. Fragomen
Rosemarie Rogers vii

1. U.S. Immigration Policy and the National Interest: Implications of the Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy to the Congress and the President of the United States 1
Lawrence H. Fuchs

2. How the Select Commission on Immigration and Refugee Policy Dealt with Exclusion and Deportation 11
Sam Bernsen

3. The Select Commission on Immigration and Refugee Policy: Evading the Relationship between I.N.S. Experiment and the U.S. Economy 17
Peter A. Schey

4. The Inner Workings of the Select Commission on Immigration and Refugee Policy: An Insider's View 37
Rose Matsui Ochi

5. Administering the Proposed Immigration Model: Implications for the Department of Justice, I.N.S. 45
John E. Nahan

6. Administering the Proposed Immigration Model: Implications for the Department of State 49
Cornelius D. Scully, III

7. Administering the Proposed Immigration Model: Implications for the Department of Health and Human Services 57
Karen M. Deasy

8. The Proposed Immigration Model: Implications for the Private Sector 63
Austin T. Fragomen, Jr.

9. The Proposed Immigration Model: A Response from Interested Groups 73
Roger L. Conner and Lindsey Grant

10. The Proposed Immigration Model: A Response from Civil Libertarians 83
David Carliner

11. The Proposed Immigration Model: A Response from the Mexican American Legal Defense and Educational Fund 91
Antonia Hernandez

12. One Economist's Look at the Select Commission's Final Report 99
Julian L. Simon

13. The Proposed Immigration Model: A Response from Organized Labor 107
Jay Mazur

14. Illegal Immigration to New York City and the Select Commission's Final Report 113
Carol Bellamy

15. Response to the Select Commission's Final Report: A Local Government Perspective 119
Grace Montanez Davis

Index 125

Introduction

Lydio F. Tomasi, Austin T. Fragomen Jr. and Rosemarie Rogers

The Select Commission on Immigration and Refugee Policy was established by Congress by Public Law 95-412 in October 1978 "to study and evaluate. . .existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the President and to the Congress as are appropriate". It thus superseded President Carter's Interagency Task Force on Immigration Policy created barely a year earlier. The Task Force's mission was consequently pared down to one of providing some background materials for the Select Commission, and the field was now wide open for the work of this new Commission—the first Commission on immigration established in this century that was of a status comparable to that of the 1907 Immigration Commission (The Dillingham Commission), which reported in 1911.

The sixteen members of the Select Commission included four Cabinet Officers, eight members of Congress, who had been selected in equal numbers from the House and Senate Judiciary Committees, and four members, including the Chairperson, who were appointed by the President. The presence of a large proportion of high-level federal officials among the Commissioners assured that the resources and expertise of the Government were at the Commission's disposal. Staff personnel of the agencies charged with administering the immigration laws were deputized by Commission members heading such agencies and provided great expertise. However, originality in concept was stifled and excess caution and concern about political acceptability by Commission members as well as staff appears to have occurred.

Even before the Final Report was officially released, its recommendations were criticized from many sides. It is evident, when analyzing the body of the report, that this document did not pass on a clear overall mandate to Congress. This conclusion is further supported by the fact that 12 of 16 commissioners offered supplemental statements on many of the issues debated and voted on in the Commission. Unfortunately, the commis-

sioners did not meet often enough nor involve themselves to the extent necessary to achieve a meaningful definition of positions. The most important criticisms that have been made of the Commission's work refer to the lack of adequate research undertaken or sponsored by it (particularly research on the impacts of legal and undocumented aliens on the U.S. economy); the abdication of the Commission's mandate to review critically the existing legal grounds for exclusion; the wholesale evasion of Constitutional issues; the failure to develop a precise and equitable formula for regularizing the status of undocumented aliens; and the relative neglect of the international context of immigration and of the relationship between immigration and U.S. foreign policy. In fact, the Commission's recommendations have been sweepingly evaluated by some as even worse than the *status quo*. Nevertheless it should be acknowledged that in the Commission's recommendations and in its printed record of hearings, reports, and research studies, many of the right questions were asked, some reasonable solutions were proposed, and a basis for discussion, debate, and choices was created. We thought that extensive debate of the issues and the Commission's recommendations was necessary in order to place the recommendations in the proper context before any comprehensive hearings or deliberation on immigration reform were commenced by Congress.

The 1981 Annual National Legal Conference on Immigration sought to initiate a national debate on "U.S. Immigration Policy and the National Interest". The conference agenda was shaped by the assumption that continued acceptance of the *status quo* would be harmful; that legal reform unsupported by strong policies for economic and social change may backfire; that "our national security, our industrial power, the strength of our social system itself are all tied to one another and to the need for a new pattern of cooperation (and creative imagination) to emerge in the United States"; and that the United States is linked to other nations in many spheres simultaneously, and as a result a global military policy unaccompanied by similarly global policies in other spheres of international affairs will have little credibility.

Moreover, it was our belief that the consequences of implementation of the recommendations were not adequately considered by the Commission and represented a significant oversight in methodology.

The one-and-a-half day program included presentations from the Select Commission's Executive Director and one commissioner; from representatives of the I.N.S. and the Departments of State and Health and Human Services; from representatives of local governments; from legal experts and economists; and from individuals representing various interest groups. The luncheon speaker, Rose Matsui Ochi, Executive Assistant to the Mayor of Los Angeles and an appointed member of the Select Commission; other resource people such as the former I.N.S. Commissioner, Leonel Castillo,

and Donald Hohl, Associate Director of the U.S.C.C. Immigration and Refugee Services; and participants from Mexico and from different regions as well as occupational groups in the United States certainly enriched the Conference. It is our hope that our endeavor, through the meetings last year and through the publication of the present volume, has made and will continue to make a substantial contribution to informed and responsible debate of this important constituency when the time comes to implement newly formulated immigration policies or to work within the contraints set by these policies.

U.S. Immigration Policy and the National Interest

LAWRENCE H. FUCHS*

As I think back over the past 20 months, it seems to me a near miracle that there is a final report from the Select Commission on Immigration and Refugee Policy. On almost every major policy question, we were confronted with contending philosophical positions and deeply felt clashing interests.

Even at the technical level, each side argued its case as if the world depended on it. How easy or how hard should it be to deport, exclude or certify? Such technical questions really are not just technical. One's answers are affected by a world view, a conception of the United States and its role in the world, and even of the purpose of life itself. Yet even at the narrower technical level virtually no answer came easily. One wants to have an immigration law—following the goal of equity—which reduces the potential for fraud. Yet, following that same goal, one wishes to have a law that reduces the potential for the abuse of authority by the government officials who admininster it. One wants to have a law that is efficient and cost-effective; yet, one also wants a law which provides protection for the essential human dignity of those who are subject to it.

Over and over again, the Commission was faced with a balancing act. And balance—the word cannot be repeated too often in emphasizing the major attitude governing its work—is the theme which runs throughout the report.

Of the many policy questions placed on the plate of the Select Commission, two stand out. The first deals with the legal migration of immigrants and refugees and the second with migration outside of the law.

Chairman Hesburgh has said that one of the major questions the Commission faced was whether or not the United States should reaffirm its liberal immigration and refugee policies. By now you know that the answer was yes.

* Executive Director, Select Commission on Immigration and Refugee Policy.

That this was done in the face of mounting anxieties in this country due to economic uncertainty and growing fears that immigrants and refugees detract from the well-being of Americans, and even threaten the social and political stability of the United States, is of major historical significance.

There should be no mistake that public opinion in the United States has been consistently negative towards immigration over the past several decades. The fear of foreigners is hardly a new phenomenon. Historically, we have had periodic cycles of anxiety about our ability to absorb new immigrants. And public opinion polls—while important—certainly should not be the controlling factor in determining complex questions of policy.

Some of you may recall a famous April 1939 *Fortune* magazine public opinion survey which posed the following questions: "If you were a member of Congress, would you vote yes or no on a bill to open the doors of the United States to a larger number of European refugees than are now admitted under our immigration quotas?" At that time, only 8.7 percent said yes and 83 percent replied no. In a survey in July in the previous year, only 4 percent of the population favored raising immigration quotas to let in more refugees and 18.2 percent declared for letting them in only under the existing stringent quota restrictions, which meant dooming tens of thousands to their deaths. The vote for keeping refugees out completely in 1938 was 67.4 percent.

Even after World War II, and in spite of the strong contrary views of Presidents Truman, Eisenhower, Kennedy and Johnson, each of whom called for the abolition of our national origins quotas system and more immigration to the United States, and in spite of economic prosperity, public opinion remained suspicious about immigration. In 1965, shortly before the passage of legislation to rid our policy of the infamous national origins quotas system, the American people by a vote of more than 2-to-1 in one survey opposed changing our immigration laws to allow more people to enter the country. And, in fact, the survey showed that the American people tended still to prefer immigrants from Canada, Northern and Western Europe, Russia, the Middle East and Asia. So it was not a surprise that in 1975 a plurality of 49 percent over 37 percent opposed the immigration of Vietnamese refugees into the United States; or that in 1978 a majority of Americans—52 percent—favored some reduction in U.S. immigration from the slightly more than 400,000 who had been admitted the previous year; or that in 1979, even after the successful immigration of many Vietnamese refugees into the United States, sizeable majorities—except among the college-educated—were opposed to relaxing immigration policies to accept a larger number of refugees from Indochina. The Cuban push-out in the spring of 1980 stimulated anti-immigration sentiments still further. According to a May 1980 Gallup Poll, 91 percent of the American people expressed the opinion that immigration to the United States should be stopped until the unemployment rate of 7 percent dropped to 5 percent, revealing a com-

monly held but mistaken idea that immigrants—almost in a one-to-one ratio—displace American workers.

Fear of displacement from jobs, fear that immigrants and refugees take more from the public coffers than they give back and fear that persons from vastly different cultures will somehow contaminate American culture and institutions, underlie the negative feelings that many Americans hold toward immigration.

The gap between the college-educated and the rest of the country on immigration policy is quite clear. In the 1978 Gallup poll, only 40 percent of the college-educated were opposed to maintaining or increasing immigration levels. In the 1980 Gallup poll, a majority of college-educated Americans actually approved of the admission of Cuban refugees to this country, the only group with a majority so inclined.

Concerns with levels of immigration are perhaps matched by those having to do with the composition of immigration. That most immigrants and refugees since 1968 have not been Protestant, European or white is unsettling—for many of those who are "the newer races", as Mayor Curley used to call them, often are perceived by the descendants of older immigrants to be less assimilable. One is reminded of the marvelous observation of Finley Peter Dunne's Mister Dooley:

> "As a pilgrim father that missed th' first boats," commented Mister Dooley, the philosopher of Archey Road Tavern, "I must raise me claryon voice agin' th' invasion iv this fair land be th' paupers an' annychists iv effete Europe. Ye bet I must—because I'm here first."

One letter to the Select Commission from a lady in Texas summed it up: "I strongly oppose taking in thousands of Vietnamese and Cubans as well as Mexicans. All these people take away jobs from Americans and they form demanding special interest groups who disrupt and exploit the natural order already established".

In the face of that sentiment and the reality of the perceptions of persons who feel deprived by immigration, the Commission has called for a modest increase in levels of immigration, a special allocation of 100,000 a year for five years to help clear backlogs under the old immigration system, and a new immigration system which expands family reunification preferences slightly, nonfamily related immigration slightly, the abolition of colony ceilings and the creation of a special preference for what is now second preference with a substantial number of visas allocated to it along with the lifting of per-country ceilings from it.

The consequences of such a policy should be clear. Legal immigration would expand slightly and the proportion of brown skinned, non-Protestant, non-European immigrants would go up slightly.

That is a statement of confidence in the United States and in the value of immigration to our well-being as a nation.

Why did the Commission take this stance?

- In the first place, because research shows consistently that legal immigration to the United States is in our self interest.
- While immigrants compete for jobs with those who are here in some sectors and some locales, over a very short period of time immigrants create jobs for Americans.
- While some immigrants require services and income transfer payments, immigrants pay much more into the public coffers than they take out.
- By reunifying families in the United States, immigrants contribute to social order and stability.
- By accepting immigrants on a nondiscriminatory basis, the United States maintains its reputation as a champion of opportunity.
- By continuing our policy of immigration, we contribute to U.S. economic growth and productivity.
- By continuing that policy we enrich ourselves with cultural diversity and strengthen our ties to other nations.
- We also increase our base for social security payments and our manpower capabilities.
- Finally, the children of immigrants in general do better at school and report fewer health problems that those of native Americans, and show marked economic mobility compared to the children of the rest of the United States.

The United States should not defy its own values and traditions as well as its self-interest by restricting immigration further. What is required is a campaign of leadership to articulate those values, traditions and interests in relationship to immigration so that the American people—particularly those who are struggling to gain a hold on the ladder to success—will support the recommendations of this Commission with respect to the acceptance of immigrants and refugees.

Of course, there are many of you who will be critical that the Commission did not call for still higher levels of immigration, the abolition of country ceilings with regard to all preferences, and/or larger per-country ceilings for Mexico or other designated countries. Some of you will be critical because the Commission failed to exempt the second preference altogether from a world ceiling. Some are undoubtedly disturbed that this Commission only by the narrowest of votes retained the preference for brothers and

sisters, and, by recommending the creation of an independent category, laid open the possibility of an expansion of independent immigration at the expense of family-related immigration.

With respect to levels, you may argue that this country should and certainly could absorb a much higher number of immigrants legally each year. Economists who testified before the Select Commisstion made the same point, some of them suggesting that one million or more immigrants a year would be easy for the United States to absorb and much to its advantage. Proponents of an expanded immigration policy pointed out that the United States of America has the lowest population density of any large developed country in the world except for Australia and Canada, that the proportion of foreign-born in our population is now at an all time low for this century, and that the United States—despite its economic troubles—still accounts for 25 percent of the world's Gross National Product. Religious and ethnic group leaders particularly stressed the responsibility of the United States in a world of economic dislocation and poverty to provide an opportunity for others—for doing well by doing good.

But the Commission could not be governed by those arguments in the face of the strong perception of many Americans that immigrants do compete for some jobs and displace some American workers, strain the social bonds that hold us together as a nation and, by contributing to population growth, diminish our resources.

While none of these last arguments were compelling either in theory or in empirical analysis, substantial segments of the American public believe them. The last—that immigration through its contribution to population growth depletes the valuable resources of this nation and the world—is an argument which the Commission listened to with great care. Yet, the final verdict must be the Scottish one—not proven. Indeed, strong arguments were made to the contrary—that immigrants are not just mouths to feed and that as human resources they create other resources in the American environment that would not have existed had they remained elsewhere.

However this is not time for a large-scale expansion of immigration. The United States already has the most liberal immigration policy in the world. That it also receives more refugees than other developed countries and that a substantial number of aliens come to this country illegally—far more than to any other country—made this Commission cautious in the face of concerns for our own people, especially those with the least education and opportunity who sometimes see in immigration a serious threat to their own well-being.

Consistent with its position on immigration, the Select Commision affirmed its support for the basic characteristics of the Refugee Act of 1980, despite the fact that the public and the congress even now is outraged by the push-out of Cubans from Mariel Harbor by Fidel Castro. The Commission

supported the concept of setting a standard for the admission of refugees not limited to geography or ideology as in the past. In fact, the Commission recommended that the allocation of refugee numbers include specific refugee characteristics, such as political prisoners, victims of torture and persons under threat of death. Such allocations would be blind to color, religion, ethnicity, nationality or ideology.

Of course, it would be unrealistic to expect that refugee admissions will escape domestic and foreign policy considerations. The important point is that the Commission—considering refugee policy—also strove to set a standard that went beyond those factors.

By affirming the U N protocol definition of refugee, the number of visas allocated to refugees and the process which permits the president to act in emergencies after consultation with the congress, the Commission articulated once more what the world already knows—that there is no nation in this world more responsive to genuine human suffering outside of its boundaries than the United States of America, that despite the awful lapses in our history—brutal discrimination against Asians, nonadmission of blacks who were ineligible for citizenship, and the rejection of Jews fleeing from certain death in the late Thirties—the United States since World War II has and will continue to accept its share of refugees.

The Commission expressed considerable concern with elements of the resettlement process—the creation of state bureaucracies, the abuse of cash assistance programs, the failures to involve state and local governments in planning and the frequent abandonment of self-sufficiency as a goal for refugees—not to undermine the Refugee Act of 1980 but to strengthen it.

While the Commission has recommended that we remain a nation of immigration, it also called for a controlled policy. Here is the essential element of balance which united this Commission and which may yet unite the American people on fundamental immigration policy reform. Recognizing that we live in a nation-state world, and that the American people are entitled to have their laws enforced fairly, firmly and consistently, this Commission took a strong stand on the curtailing of opportunities for future illegal migration.

There is one element of this stand which will appeal to many, the legalization of a substantial portion of undocumented aliens in this country. But I want to emphasize that this Commission does not see legalization as a reward for illegality or even as relief from inhumanity. It sees it as a practical and even necessary measure—certainly far better than the alternatives—for helping us to obtain control over illegal migration in the future. To be sure, the Commission was well aware that a large number of illegal migrants are highly motivated, decent, creative human beings who now, living in the shadows in fear of apprehension, will contribute much more to American society once they are allowed to participate in it and are protected by its laws than they do presently. And, to be sure, this Commis-

sion recognizes that a great many of the illegal aliens who have come to this country have done so in response to seduction from employers in the United States, and that many are following a path of migration trod by members of their family for generations, long before restrictions were placed on the movement of persons to the United States from any nation in the Western Hemisphere. But the basic reason for legalization of the present stock of undocumented aliens is to protect American society. In the first place, as long as we continue to have such a large number of persons, with the prospect of considerable expansion, we have a serious problem of relatively unskilled workers competing for jobs, some of which otherwise would be taken by Americans, and the depression of U.S. labor standards and wages. Their presence as an underclass affects our well-being in other ways because they are afraid even to report health problems, send their children to school or tell of criminal activity against them.

Legalization is extremely important for future enforcement efforts to develop an accurate data base on the sources of illegal migration, the migration routes and patterns followed by those who come and their characteristics and impacts in the United States. That data base is critical to the effective targeting of investment and aid strategies in the towns and villages of large sending countries from which illegal migration emanates. It also is critical to the targeting of enforcement resources to prevent future flows. It is only through legalization that a random sample of illegal aliens can be drawn which will give us the valuable information we need to accomplish those objectives. Otherwise, we will continue to have fruitless arguments about the benefits and costs of a population whose overall size, characteristics and impacts will remain unknown. We will continue to play cops and robbers through interior enforcement measures which are disruptive at the workplace and in the neighborhoods, and which sometimes violate the rights of American citizens and resident aliens.

This Commission did not back into its legalization or amnesty proposal as something that has to be done because nothing else can be done. It sees it as an integral part of the efforts to control a policy that is now out of control, an essential element of a new attempt to close the half open back door. It made that clear by linking legalization to the institution of new enforcement measures. Unless such measures are passed and instituted, according to the Commission's recommendations, legalization should not take place. For whatever it merits on its own terms, this Commission does not believe that the American people would or should accept an amnesty program unless the United States government could assure its people that there would not be another amnesty five or ten years down the road.

The centerpiece in that assurance, as you all know, is the highly controversial employer sanctions proposal. An employer responsibility-employee eligibility law will, over a period of five to seven years, effectively curtail illegal flows by demagnetizing opportunities to work in the United

States except at small places of business. It then will be possible to have much more precise enforcement strategies and tactics at ports of entry and by the border patrol.

The proposal has been criticized because it is alleged to pose a threat to privacy. The privacy concerns of Americans are extremely important. Yet, we live in a data bank society. Expansion of data bank facilities with computer terminals was tremendous in the 1960s, the very decade which saw an expansion of civil liberties protections for Americans. It is not the absence of an employee identification system in a data bank which protects one. Nor would its presence make anyone less secure. How would the enforcement of the Alien and Sedition Act in 1798 or the internment of Japanese nationals and Japanese-Americans in World War II have been any different if we had at those times, for example, an updated, counterfiet resistant social security card?

Employer sanctions also has been criticized because it would lead to discrimination. Yet a majority of the Commissioners believe just the opposite—that a reliable means of employee eligibility which is universal will reduce discrimination—a position which seems plausible to me.

The employer sanctions proposal also has been criticized on the grounds of being naive—that it is impossible to seal the borders. But that is precisely the point. It is impossible to seal the borders. It is not impossible to cut off the incentive for illegal migration through an employer responsibility-employee eligibility law. The scenario for the future without such a law is not hard to predict. There will be repetitions of the many reported incidents of "coyotes" who often rob and rape the migrants in their charge, or the incident last summer when 13 persons were abandoned to die in the Arizona desert, or the one in which 22 U.S.-bound Dominicans ended their dream of opportunity in America dead in the ballast tank of a ship after spending as much as $3,000 each—a life savings—to try to come to the United States.

A scenario that foresees growth in illegal migration without an employer sanctions law seemed plausible to most Commissioners. The number of people in serious want who will seek opportunity in the United States is bound to grow. Cutting them off through effective enforcement represents a serious and morally troubling position. Yet, it would be immoral to permit illegal immigration to undermine American laws generally and/or immigration laws specifically, or to exacerbate ethnic tensions, or lead to Draconian measures against aliens, or to further competition for Americans least able to afford it, or to allow the scene in the Arizona desert to recur. As the *St. Petersburg Times* argued editorially in July 1980 after the Arizona episode, the Commission has no excuse not to recommend employer sanctions and a secure means of employee eligibility. "There can be no more prey for the coyotes", it said. "Decent Americans want no more deaths in the desert."

One proposal the Commission did not endorse is for a large-scale guestworker program, and the Commission is being criticized by some persons, especially in the Southwest, for that failure. The reasons you know: American and European history show that the large-scale importation of foreign workers has many serious long-term social and political costs which ought to be avoided. It is certainly not a substitute for enforcement; nor is it a worthy alternative to legal immigration. Once again, the Commission emphasized balance. It called for streamlining the existing H-2 program which is based on demonstrated need rather than an assumption of need.

The Commission has argued that we should end the tawdry aspects of immigration—the invitations to Abscams, the endless litigation, the frustration of immigration employees trying to do a job without the tools. Only by a large measure of control will we be able to restore the nation's confidence in a generous immigration and refugee policy and end the growing xenophobia that feeds on a failure to distinguish between legal and undocumented migration.

Taken together, the recommendations of the Commission will please no special interest group or perhaps even any individual. Parochialism—whether coming from absolutists who wish zero population growth for the United States by 1990, persons who think in terms of a fixed pie of jobs, employers who would rather rely on cheap foreign labor than upgrade working conditions, or ethnic group leaders determined to redress the great injustices of the past—will destroy the opportunity for balanced immigration policy reform.

The balance to be achieved by the Commission's recommendations is, I would maintain, highly desirable. The agenda for action is there. Far from perfect, it can and should be improved. What is needed is a long and a spacious view which thinks of the national as opposed to parochial economic, regional or ethnic group interests. We need a policy which will help us to build a more decent, humane, multiethnic society consistent with a national unity based on the dignity and freedom of all persons.

How the Select Commission on Immigration and Refugee Policy Dealt with Exclusion and Deportation

SAM BERNSEN*

EXCLUSION

The Select Commission was solemnly instructed by the Act of Congress which created it on October 5, 1978 to study and evaluate existing laws, policies and procedures governing the admission of aliens and to make legislative recommendations to the President and the Congress. When the Commission reached the subject of grounds of exclusion it decided to turn this matter back to the Congress. Commission members who advocated this tactic felt that exclusion was simply too sensitive. They felt that recommendations on such adrenalin-pumping subjects as homosexuals, criminals, subversives, marijuana violators, etc. would capture the news headlines and stir up intense public controversy, all to the detriment of the Commission's hard work on other aspects of the immigration system.

Nevertheless, the Commission did take one positive step with regard to exclusion. It voted virtually to abolish the so-called re-entry doctrine. Under this doctrine a lawful permanent resident is subject to exclusion each time he re-enters the U.S. For example, an alien lawfully admitted for permanent residence who subsequent to such admission commits an offense for which he is not deportable, may be excluded if he departs and seeks re-entry after a temporary visit abroad. The Commission recommended that the re-entry doctrine apply only to four categories: those who are excludable because of a criminal conviction abroad, persecution of others, entry without inspection, and subversion.

The Commission also attempted to deal with one substantive ground of exclusion—the labor certification requirement for certain immigrant workers. It divided, however, on the question of whether to continue the present practice in a streamlined form or whether to revert to the pre-1965

* Former General Counsel, Immigration and Naturalization Service, practicing attorney, Fried, Fragomen, Del Rey, Bernsen and O'Rourke, P.C., Washington, D.C.

open procedure. Under the present law the prospective immigrant worker is not admissible. He becomes admissable only if the Secretary of Labor certifies that there is a shortage of U.S. workers. Under pre-1965 law the worker was admissible. He became inadmissible only if the Secretary of Labor certified that there was no shortage of U.S. workers. While the labor certification question was unresolved the Commission did consider and present the alternatives in its report.

The Commission also took some action with respect to the exclusion process. Although that process technically begins when an applicant for admission at a port of entry is referred for hearing before an Immigration Judge, it actually and realistically starts much earlier. In fact, most aliens are defeated in their attempt to come to the U.S. not at the port of entry, but in the Consul's office during the visa application process.

The reason for this is that the Immigration and Nationality Act does not contain a single procedural safeguard to assure that a visa application is fairly adjudicated. The alien has no right to legal counsel at the visa interview. He has no right to see the record. He has no right to be informed of the reason for denial. He has no right to appeal. Insofar as the statute is concerned, it leaves the visa applicant entirely at the mercy of the consular officer.

For over a quarter of a century scholars and commentators have criticized consular procedure. Some have called it "Consular Absolutism" unparalleled elsewhere in American law.

Those who defend the "no right" philosophy say that the State Department upon request will review a visa denial; that the number of erroneous or unwarranted denials is small; that with the rarest of exceptions, consuls adjudicate visa applications fairly and objectively; that the right to appeal a visa denial will subject the State Department to political influence.

How well do these defenses stand up? The State Department does indeed conduct reviews when requested, but its views are not binding on questions of fact. For example, a consul may conclude that an immigrant visa applicant has made a fatal admission against his/her interest during an interview. The alien under oath may vehemently deny that he/she made such an admission. Unfortunately this is a question of fact. The Department cannot overrule the Consul. By the unappealable decision of a single official the alien may be barred forever.

The defense of few denials does not help the visa applicant in whose case denial may be unwarranted by the Consul's view of the facts. It would seem that when an alien is denied the precious opportunity to immigrate to the U.S., one error is too many if it could have been corrected by an objective independent review.

Fair as consuls may be in their visa adjudications, they undoubtedly would agree that they are not infallible. But more importantly, in our

scheme of things absolute power in a Consular or other official is simply repugnant to the American system.

The defense of political influence asks us to believe that an individual Consul is in a better position to withstand political pressure than an appellate body. If we believe this, perhaps we should consider abolishing the appellate reviews allowed by many federal agencies in a great variety of administrative matters.

These were the arguments, pro and con, on the "no rights" philosophy for visa applicants. The Commission's vote was against appellate review of visa denials. Unfortunately the Commission could not even be persuaded to allow partial relief by permitting appellate review only for immigrant visa applicants. Suggested as a compromise, the limited review would avoid the high costs involved in the potentially large number of appeals that might be generated by the several hundred thousand annual nonimmigrant visa refusals.

The Commission's legal staff was charged with conducting a broad review of the entire Immigration and Nationality Act. It proposed and drafted a great many changes. Participants in this effort included representatives from the Immigration and Naturalization Service, the State and Justice Departments and members of the bar. The draft revision was not reviewed by the Commission. It was prepared by the staff as an appendix or supplement to the Commission's report.

A major consideration of the legal staff was fair procedure throughout the immigration system. The legal staff urged that decisions be based on evidence of record; that admissions against interest, so frequently used to deny visas, be recorded in the words spoken by the alien; that the record be available for inspection by the applicant; that the applicant be given the opportunity to rebut evidence of which he or she is unaware unless the evidence is classified. These changes would not only promote fairness, but would result in a more professional work product by adjudicating officials and facilitate quality reviews by administration inspection teams.

To cut down excessive delays in adjudications the legal staff recommended that the heads of the INS, State and Labor publish and set time limits for decisions on applications and petitions.

To harness the unfettered exercise of discretion the staff redrafted numerous provisions. For example with respect to applications for discretionary waivers of inadmissibility it was recommended that the application be granted if the alien is statutorily eligible unless it is determined under criteria published by the Attorney General that the waiver would be contrary to public interest.

The Commission's legal staff drafted for consideration a complete revision of the exclusion grounds, reducing them from 33 to 16.

Its guiding principle was concern for public welfare and protection of the national security, balanced with humanitarian considerations. In its draft the legal staff deleted obsolete and overlapping grounds; updated medical grounds; proposed that exclusion of criminals be based solely on convictions; and introduced a statute of limitations.

In addition the staff proposed that:

- Conviction for possession of marijuana of 100 grams or less not be a bar.
- Waivers of inadmissibility for narcotics violators be allowed for those who are close relatives of U.S. citizens or lawful permanent residents.
- Ineligibility for naturalization no longer be a ground for exclusion.
- Instead of barring aliens because of membership in a proscribed organization or advocacy of a political philosophy, the alien be excluded for what he would do rather than for what he believes.
- The waiver of inadmissibility for nonimmigrants be simplified by changing the present two-step process into a simple one-step procedure.
- The waiver for innocent technical defects in immigrant visas be restored.
- Arrival inspection of an alien by an immigration officer not be mandatory if the alien presents a visa less than 4 months old.

DEPORTATION

Because of publicity involving alien students who violated local laws the Commission recommended that a nonimmigrant convicted of an offense punishable by a sentence of six months or more may be deported. Otherwise the grounds for deportation were not reviewed or considered by the Commission. This was unfortunate as some of the existing grounds such as failure to make an address report are much too severe. Other deportation grounds are obsolete, such as entry into the United States from contiguous territory (which means Canada or Mexico) by an alien who resided in such territory less than two years after arrival on a nonsignatory line.

A statute of limitations on deportation of long time permanent residents was considered by the Commission. A ban against deportation of lawful permanent residents under age 18 was also discussed. Unfortunately, the Commission could not reach a consensus. However, to provide greater relief from deportation it recommended that significant changes be made in the suspension statute by changing "extreme hardship" to "hardship" and by discontinuing congressional review of suspension cases.

As with exclusion, the legal staff prepared a draft revision of the deportation grounds. It proposed that:

- deportation for conviction of a crime committed within 5 years after entry be based on a sentence to confinement of more than one year in the case of a single conviction.
- where deportation is based on two convictions the alien would be deportable only if the crimes were committed within 10 years after entry.
- membership, advocacy and belief would be dropped as a basis for deportation. Only illegal action harmful to the U.S. would make the alien deportable.
- a conviction for possession of marijuana would lead to deportation only if the amount exceeded 100 grams.
- narcotic addiction would be dropped from the list of deportation grounds.
- time limits for deportation would be applicable for certain convictions.
- the waiver of deportation for visa fraud committed by a close relative of a U.S. citizen or permanent resident would be revived.
- pardons and recommendations against deportation would be made applicable to narcotics cases.

Those who labored mightily on this great opportunity to shape immigration policy for the 21st century hope the product of those labors will be carefully considered.

The Select Commission on Immigration and Refugee Policy: A Lost Opportunity for Progress

PETER SCHEY*

Public Law 95-412, passed October 5, 1978, established the Select Commission on Immigration and Refugee Policy [herein-after "SCIRP"] "to study and evaluate. . .existing laws, policies, and procedures governing the admission of immigrants and refugees to the United States and to make such administrative and legislative recommendations to the president and to the Congress as are appropriate". After more than two years of work, and the expenditure of approximately $2 million, the Select Commission issued its Final Report and Recommendations on March 1, 1981. This test briefly examines why the final report of the Select Commission has been labelled "repressive", "backward" and a "sham" by minority members of the Commission, and why impacted communities have called the report "short-sighted", "uninformed" and "a waste of the time of hundreds of witnesses and millions of dollars in taxpayers' money". It is the hypothesis of this presentation that the Select Commission did in fact issue a "short-sighted" report which, as Commissioner (Appellate Judge) Cruz Reynoso states, "is not responsive to the needs of our country". Most importantly, the Commission, which largely accepted the analysis and positions developed by Commission staff, failed to recognize the global and historical nature of unlawful migration. Commission members were uninformed about or ignored the structural economic questions which rest at the core of the immigration dilemma. Virtually no analysis was presented on the unique labor relations which exist between certain sectors of the U.S. economy and their undocumented work forces. Precisely what structural changes would have to occur in discrete sectors of the U.S. business economy to decrease or terminate what has been a strong appetite for foreign (cheap and exploitable) labor for more than two hundred years? The Commission also neglected to

* Director of Legal Services, Aliens's Rights Program, Los Angeles.

examine the economic development programs in major sending countries and the impact of their anticipated success or failure on emigration to the United States. Any serious effort to develop a humane, long-term immigration policy for an advanced industrial society must explore the social, economic and political conditions and trends in less developed countries which are the primary sources of migration.

Ultimately, the Select Commission's proposals differed little from the recommendations proposed by past commissions, committees, Inter-Agency task forces and the like. The approaches suggested include a simplistic mix of: 1) an employer sanction law (theoretically to dry up the demand for cheap labor); 2) a "liberal" amnesty (to appease "liberals" and take care of a segment of the current undocumented population); 3) a slightly increased quota (addresses none of the critical issues); and 4) a slight increase in the Border Patrol (addresses none of the critical issues). None of these recommended "solutions" has worked before in the United States nor in any other industrialized country. As stated by the League of United Latin American Citizens (LULAC), the oldest and largest Hispanic civil rights organization in the United States, the Commission "appeared to be more concerned with the political acceptability of their recommendations than. . . attempting to solve problems on the merits surrounding the issues".

THE HISTORICAL USE OF FOREIGN LABOR BY THE OWNERS OF U.S. CAPITAL

Immigrants have arrived in the United States since the 15th century as slaves, indentured servants, merchants, land-owners and those seeking religious freedom. Involuntary immigration through the slave trade provided both rural America and the developing urban centers with exploitable, back-breaking labor which accelerated the growth of capital and profit margins. With the termination of the slave trade in the 19th century, Irish and Chinese larborers were imported in massive numbers to provide cheap labor for ever-expanding industries. Certain sectors of the economy, particulary in rural areas and in labor-intensive, rapidly developing industrial sectors, began to solidify their reliance on pliable, foreign labor (Daniels and Kitans, 1970). Mexican workers were soon thereafter "discovered" by U.S. entrepreneurs as a source of exploitable labor that could replace the Chinese laborers (Bustamente, 1976:364-376). During the final decades of the 19th century business agents from Arizona and New Mexico actively recruited Mexican labor to travel north from the state of Sonora (Gonzalez and Gonzalez, 1974:28).

Mexican workers moved northward, induced by offers of employment in the extensive farmlands of California and Texas developed through new irrigation works. They worked on railroad construction in Texas, Missouri,

New Mexico, California, Kansas and Illinois, and in the stockyards and steel mills of Chicago (McWilliams, 1968:221-222). Again, the lowering of production costs and increased short-term profits, accomplished through the payment of low wages and the imposition of working conditions unacceptable to the U.S. worker, were the primary motives for the importation of these workers.

In 1917, the United States enacted the most restrictive immigration policy in its history. Yet, months later, the first "temporary" foreign labor program was enacted and implemented (Kiser and Kiser, 1979:Chaper I). This program, which involved almost 80,000 workers, lasted until 1922. As has been the experience with subsequent U.S. temporary worker programs, rules and regulations promulgated to protect the social and labor rights of these foreign workers "were unenforced" (Kiser and Kiser, 1979:16). Twenty years later the Mexican Labor Program, commonly called the *Bracero* Program, was formalized in a bilateral agreement reached between the U.S. and Mexico. Implementation of the Bracero Program provided agricultural interest in the U.S. with easy access to a labor pool of "captive workers who were totally subject to the unilateral demands of employers. . ." (Briggs, 1980). During its twenty-two years of existence, approximately four million temporary workers entered the United States under the Bracero Program.

The policy of importing cheap labor into the United States has been an integral part of the economic growth of this country. The introduction to the SCIRP report benignly suggests that "many undocumented/illegal migrants were induced to come to the United States by offers of work from U.S. employers. . ." (Final Report:12). Only three paragraphs of the report are dedicated to an analysis of "job displacement" and "wage depression" allegedly caused by undocumented migration (Final Report:39-40). The total failure of the Commission to analyze coherently the complexities of the economics involved in migration into the United States compromised the entire research effort which Congress had mandated. No serious effort was undertaken to investigate the labor outlook for the United States in the coming decades in terms of its implication for immigration policy. Nowhere does the Commission attempt to isolate those occupation and age-sex groups that are likely to have a shortfall of workers in the next decade and to match the characteristics of the shortage categories with the demographic characteristics of the undocumented, foreign work force (Wachter, 1980:342-354). The Commission also failed to recognize that the distribution of benefits and costs of immigration to the owners of U.S. capital (and the native population) depends less on whether the migrants are documented or not and more on the demographic characteristics of the migrants. In summary, the Commission concludes, without supporting analysis, that legislation (*i.e.*, an employer sanctions law), as opposed to the needs of the U.S. economy, will control the flow of undocumented

migrants into this country. This has never before been the case either in the U.S. or in the other industrialized countries. The Commission refused to accept the fundamental truth that the major determinant precipitating migrant flows into industrialized countries is the willingness (eagerness) of the owners of capital to make certain types of jobs available to this pool of pliable labor. Any effort to address the long-range immigration issues faced by the United States must be willing to analyze the structural economic conditions which have historically led to the recruitment and employment of exploitable foreign labor by U.S. business interests.

INCOME DIFFERENTIALS

Without any serious examination of the issue, the Select Commission concludes that the relationship between per capita income in major sending countries and the United States plays the key role in precipitating undocumented migration into the U.S. It is suggested that the "high rates of under- and unemployment" in the sending countries (push factors), coupled with "employment opportunities" in the U.S. (pull factor), is the main characteristic motivating migration into the U.S. (Final Report:36). The Commission states that the "costs of ignoring the needs of the developing world are serious" (Final Report:20). Barely scratching the surface of this type of global analysis, the Commission concludes that "the world situation today. . .throws into serious question the assumption that international migration can be controlled by domestic policy" (Final Report:20). The Commission then blunders forward and makes the very presumption (that simplistic domestic legislation can control the flow) which they have just cautioned against.

While the Select Commission suggests that "all studies" support the model mentioned above, this is far from the truth. Although "all" (or most) studies agree that the eagerness for cheap labor within the United States is a major factor in production migration into the U.S., there is far less agreement on the precise role of "under- and unemployment" in the major sending countries. For example, MIT economist Michael Piore states that it is a "misconception. . .that poverty and population pressure in underdeveloped areas are the prime causes of large scale migration" (Piore, 1978:60). He notes "income differentials have existed for long periods of time without stimulating migration" (Piore, 1978). Numerous researchers, particularly those who have studied U.S. migration issues through work in the sending countries, would agree with Carlos H. Zazueta that certain regions "have traditionally contributed part of their population to the United States" that is, studies consistently establish the existence of a "migratory tradition" (Zazueta, 1980:45-50). In terms of Mexico, it has been recognized that "the sending states are not the most economically underdeveloped states in the country nor are they the closest, geographically speaking, to the United

States" (Zazueta, 1980). In fact, complex factors such as family tradition, village tradition, awareness of Western social status symbols, a desire to develop surplus income to purchase property or open a business in the sending country, may all appear in the equation which gives rise to migration patterns into the United States annexed North Mexico. Mexican people have an extended history of moving back and forth between what is now the southwest portion of the United States and Mexico.

Assuming that the Commission is correct in proposing that it is largely the differential standards of living in sending communities and the United States which precipitate undocumented migration into the United States, the recommendations of the Commission become all the more naive. Within this framework of analysis, the Commission completely failed to make long-range, rational recommendations. It is estimated that by the year 2000, fully 77 percent of the world's anticipated population—5 billion people—will live in less developed countries. What will life be like for those teeming millions? A recent U.S. government study concluded that "most of these people. . .will live in 'uncontrolled settlements'—slums and shanty towns where sanitation, water supplies and health care will be minimal at best" (*The Global 2000 Report*, 1980:1).

Today, more than 800 million people live in conditions of absolute poverty, their lives dominated by hunger, ill health and the absence of hope for raising the quality of their lives. By the year 2000, if current policies remain unchanged, "their number could grow to more than one billion" (*The Global 2000 Report*, 1980:5). By most accounts the coming decades will bring a world more crowded, more polluted, with diminished per capita supplies of fresh water, croplands and forests while human numbers and needs for food, fiber and timber increase. And, most economists agree that unless major structural changes occur, the lot of the planetary majority will progressively grow worse compared with those living in the affluent, industrialized nations. The Brandt Commission recently pointed out that in the coming decades the world may face the risk of social chaos and more than military conflict—as a result of mass hunger, economic disaster, environmental catastrophes and political upheaval. As stated by former Secretary of State Muskie before the 11th Special Assembly of the U.N. General Assembly on August 25, 1980, in the coming years "the number of people going hungry will rise by millions" (State Department Current Policy No. 213).

In short, by many accounts the fundamental impetus for undocumented migration into the United States identified by the Select Commission, *i.e.*, the differential between standards of living in the sending countries and the United States, will be exacerbated in the coming decades. Life for most people on earth will be more precarious in ten years than it is now unless we ex-

perience a significant restructuring of the international economic system. In terms of undocumented migration into the United States, any long-term analysis aimed at providing a basis for policy options must, if it is to be realistic, examine with relative precision the economic, social and political "push" factors that historically and currently contribute to migratory flows into this country. Should such an examination objectively identify and measure such factors, methodologies for reducing or eliminating them would have to be incorporated into any serious effort at resolving the U.S. immigration dilemma.

THE IDENTIFIED IMPACT OF UNDOCUMENTED MIGRANTS ON THE UNITED STATES

In proposing solutions to the immigration question, it is necessary to identify the national interests of the United States. The Select Commission poses the question: "Is immigration and the acceptance of refugees in the U.S. national interest" (Final Report:4)? The Commission, however, never adequately answers its own question. The Commission failed to define and analyze objectively the "U.S. national interest". They side-stepped a detailed examination of the impact of undocumented migration on the social, political and economic institutions of the United States. Therefore, they were forced to reach the vague and unempirical conclusion that on the one hand there are "many benefits which immigrants bring to the U.S.", but on the other hand "there are limits (undefined in the Final Report) on the ability of this country to absorb large numbers of immigrants. . .". Having spent more than $2 million, the Commission should have been able to produce a more profound analysis than this.

The number of undocumented migrants in the United States is clearly a function of the availability of lawful immigration. The more lawful quotas for immigrants are increased, the fewer people have a need to enter the United States illegally. However, having failed to evalute in any objective sense the impact of immigration on the "U.S. national interest", the Commission was at a loss to determine whether the legal quotas should be increased and, if so, by how much. Dealing with this question at their final meeting, when votes were cast on the issue, the Chairman of the Commission, Father Theodore Hesburgh, said "the thing is so complicated. . .the best we could do is say we would agree with a certain ballpark figure. I would say 450,000 is as good as any others I have seen." No objective explanation was provided for this "ballpark figure". Commissioner Congresswoman Elizabeth Holtzman, perhaps the Commissioner with the most experience in immigration matters, commented that, "I don't understand" the basis for this "ballpark figure". She noted that no one had "provided the reasons" for the "ballpark figure". After much confused discussion, Father Hesburgh finally suggested that the "various options" (without explanation)

which were listed "on one sheet of paper", be provided to the Commissioners by staff members "and they can look at it during the noon (lunch) hour. . .", He added that the Commission's conclusions on this critical issue "don't make that much difference" because it would ultimately "be decided by Congress. . .". At least two factors contributed to this evasion of one of the most critical questions facing the Commission: 1) staff reports prepared for the Commissioners entirely failed to integrate and present existing data on the impact of immigration on the United States; and 2) staff reports were hurriedly prepared in the last days before the final Commission meeting and were only mailed to Commissioners approximately one week before the meeting leaving virtually no time for the Commissioners to review what little was sent them. Of course, it was impossible for the Commission to reach rational policy recommendations on quotas for lawful immigration given their lack of access to compiled data on the impact of migration on the "U.S. national interest", let alone the failure to define this concept.

In the most superficial manner imaginable, the Select Commission's final report briefly recites the views of certain academics, church leaders and impacted communities concerning the impact of migration on the United States: "Greatly expanded immigration, they believe, will go a long way towards providing needed workers. . .(implementing our) humanitarian responsiblility. . .and should certainly cause no internal problems. . ." (Final Report:7-8). A greater simplification and distortion of the positions espoused by "many economists, ethnic groups and religious leaders" would be difficult to imagine. There are almost as many different models, perceptions and proposed solutions as there are economists, ethnic groups and religious leaders. Without analyzing the intricacies of these diverse viewpoints, the Commission ingenuously lumps them into one category: Those who call for a "great expansion" in the number of immigrants allowed to legally enter the United States (Final Report:7). This left the Commission free to identify another seemingly fringe group—those "restrictionists" who believe that "U.S. immigration policy is out of control" and who call for reductions in lawful immigration—and who end up supporting the "equitable" position of "a moderate increase" in legal immigration (Final Report:9). The Commission concluded that "this is not the time for a large-scale expansion in legal immigration. . .because the first order of priority is bringing undocumented/illegal immigration under control. . .". This statement is a nonsequitur. Perhaps the most rational method for bringing undocumented migration "under control" is to accept a large-scale expansion in legal migrants. This question cannot be answered without carefully analyzing the impact of some increase in lawful migration on both the "U.S. national interest" and the likelihood that migrants would prefer to enter the U.S. in a legal rather than an illegal status. This analysis however was not possible because, as Commissioner Elizabeth Holtzman stated, they did not

have access to "reliable information" on the "impact (of immigrants) on the economy, or whether they displace American workers and, if so, in what sectors. . .In short, I believe the Commission's decision-making process itself was flawed."

As a result of the absence of any analytic framework or supporting data, the Commission's final report literally bounces back and forth from one position to its opposite. On the one hand, they state that immigrants "work hard and contribute to the economic well-being of our society; strengthen our social security system and manpower capability. . .and powerfully demonstrate to the world that the United States is an open and free society. New immigrants benefit the United States and reaffirm its deepest values" (Final Report:6). These conclusions bear little relationship to the Commission's ultimate findings and are simply gratuitous rhetoric. A few paragraphs later the Commission shifts gears and discusses the "serious adverse effects" of undocumented migration and the need to "regain control" over U.S. immigration policy (Final Report:11-12). Nowhere does the Commission attempt empirically to measure how much and what kind of immigration into the U.S. is in the "national interest", or perhaps inevitable regardless of our "national interest".

EMPLOYER SANCTIONS

Without having ever adequately identified the scope of the problem they are seeking to resolve, the Commission nevertheless races forward to the centerpiece of its response to the problem: "[S]ome form of employer sanctions is necessary if illegal migration is to be curbed", (Final Report:62). The Commission proposes a billion dollar solution to an undefined problem despite the fact, as stated by Commissioner Rose Ochi, that "nowhere have such laws been shown to be effective in stemming illegal immigration. . .". The fact that approximately ten states in the United States and many Western industrialized countries already have employer sanctions laws on the books which are universally unenforced and unenforceable did not deter the Commission's support for this recommendation.

The Commission believed that an employer sanctions law would cause racial and national origin discrimination unless coupled with an "employee eligibility system (which) must apply equally to each member of the U.S. workforce"—whether that individual "be an alien authorized to work in this country or a U.S. citizen" (Final Report:67). Several Commissioners rationally observed that this proposed massive federal program, involving every worker in the U.S. labor market, is an "overreaction to undocumented/illegal immigration" (Final Report:68). Given the obvious lack of data upon which the Commissioners could evaluate the severity of the assumed negative impacts of illegal migration, it should not be surprising that they were "unable to reach a consensus", or anything close to a consensus, as to how an

employer sanctions law should be implemented, *i.e.*, how workers would be counseled to prove their right to work (Final Report:68-69).

A bare majority of the Commissioners appear to have supported the development of a "secure" (*i.e.*, counterfeit-resistant) identification card which every worker in the U.S. would ultimately have to produce as a condition of employment. As pointed out in an excellent analysis prepared by the Institute of Public Representation, Georgetown University Law Center (Washington, D.C.), "the administrative burdens imposed on employees (by an employer sanctions law) would fall almost exclusively on marginal workers with transitional work status" (Discriminatory Effects of Employer Sanctions, Institute for Public Representation, 1980:9). Minority youth seeking employment will be the least likely to subject themselves to a federal government interview which would be a prerequisite for obtaining a "secure" identification card. Hispanics, young and old, would be subjected to the closest scrutiny during such interviews. Hundreds of thousands or millions of U.S. workers will have to apply to local and state governments for proof of citizenship. Responding to such requests is a low priority for local governments which already have massive backlogs of identical requests submitted by U.S. citizens seeking documentary proof of their citizenship for submission to the Immigration Service in conjunction with applications to immigrate close family members. Nowhere does the Select Commission propose a mechanism (which would be constitutionally required) whereby persons denied their "secure" identification cards could appeal such decisions.

Interestingly enough, the Select Commission accepted the notion that if job displacement is caused by undocumented migrants, something many economists dispute, this displacement would mostly impact upon "young, unskilled" U.S. workers (*i.e.*, many minorities). The Commission had insufficient data to measure this assumed displacement, concluding only that "some" of it has "certainly" occurred (Final Report:41). In response to this imprecisely defined problem, the Commission concludes that the country needs a billion dollar solution—a massive federal program that would require, initially, "every" worker in the U.S. to undergo an interview and be provided a "secure" identification card, and secondly massive enforcement efforts if the program is to be effective. The Commission ignores the fact that the unquantified group of "young, unskilled" workers that the program would ostensibly protect would be the very workers least likely to possess (in many cases) proof of citizenship, the least likely to subject themselves to a new government eligibility program, the most likely to suffer discrimination in the implementation of eligibility interviews and the most likely to be harrassed by employers. As stated by Commissioner (Appellate Judge) Cruz Reynoso, "the result will be that those who appear 'foreign' in color, language or customs will suffer discrimination".

One final point should be noted. We have already examined the deeply ingrained historical reliance by the owners of U.S. capital on cheap foreign labor. If an employer sanctions law is to reduce or eliminate this economic fact of life, the penalty suffered for violation of the law would have to outweigh the benefits derived from the employment of undocumented workers. Such effectiveness would require two ingredients: penalties which consistently outweigh the profitability of hiring undocumented migrants and sufficient enforcement against violators to deter those who are not prosecuted. Neither is likely to occur. First, the Commission favors "civil" rather than criminal penalties for violators. While no consensus was reached on this question, many Commissioners felt that a first violation should result only in an "administrative citation", *i.e.*, no real penalty at all (Final Report:64). This invites all employers to try to break the law at least one time. A second violation would subject the employer to a $1,000 fine per undocumented worker. A third violation would lead to efforts by the U.S. government to obtain an "injunction in a federal district court". These proposals were clearly drafted by someone unfamiliar with the economics involved in the employment of undocumented workers and the workings of the federal judicial system. Given the low probability of apprehension (discussed below), many employers would gladly pay the government $1,000 per foreign worker from time to time. Many U.S. businesses currently pay these kinds of sums to private attorneys for handling the paperwork involved in importing immigrant workers. Certainly employers would not be fined $1,000 for each separate hour, day or week that they hired an undocumented worker. It is likely that the effort would be made, as stated by the Commission, to fine the violating employer $1,000 "per undocumented/illegal immigrant employed" (Final Report:64). Employers would be more than tempted to appeal the fine administratively, eventually take the matter to court and at the end of a lengthy legal battle, during which time the undocumented worker would remain on the job, pay the fine and terminate the employee. Chances are the employer will cover his/her legal fees by lowering wages or speeding up production.

Likewise, the notion that injunctions could easily be obtained is naive. One need do no more than look at the history of the enforcement (or more properly, lack of enforcement) of the federal Occupational Safety and Health Act (OSHA) in the United States, as well as other enactments to protect labor, to realize that the power of employers to entangle and delay matters in our federal courts is nothing to be underestimated. Courts will seldom issue injunctions, which in these cases would toss people out of work, without first holding evidentiary hearings. Such hearings must be calendared with trial courts already complaining of the volume of cases which they are required to adjudicate. Temporary injunctions are sometimes granted, but a permanent injunction will only be issued after a trial. Once again the judicial process

would probably allow the employer to delay termination of the alleged undocumented worker, while shifting the cost of legal fees to the worker through lower wages or speed-ups in production.

Aside from the technical problems involved in efficiently enforcing an employer sanctions law, it would not be inappropriate to question further whether sufficient resources would ever be made available by the Department of Justice to pursue violations to deter violators not immediately located or cited. A review of the Department of Justice priorities to date would indicate that such resources wou'd not be made available. Under existing federal law it is already illegal for employers to conspire with contractors to bring undocumented immigrants into the United States, or to transport them within the country, or to conceal, harbor or shield them from detection, or to contract for their employment under the Farm Labor Contractors Act. Despite the existence of these vehicles for restraining employers from hiring undocumented immigrants, they are rarely enforced. It would be naive to expect voluntary compliance with an employer sanctions law (*See, The Effects of Proposed Legislation Prohibiting the Employment of Illegal Aliens on Small Business*, hearings before the Senate Select Committee on Small Business, November 22 and 23, 1976). On the other hand, it is unrealistic to assume that enforcement of an employer sanctions law would be given a high enough priority by local offices of the Department of Justice to effect a sufficient number of court actions to deter non-apprehended violators.

Congress and the president should be urged to review two reports prepared by the U.S. Comptroller General in 1980: 1) *Prospects Dim for Effectively Enforcing Immigration Laws*, U.S. General Accounting Office, November 5, 1980; and 2) *Controls Over Nonimmigrant Aliens Remain Ineffective*, U.S. General Accounting Office, September 11, 1980. These reports, prepared for a fraction (probably less than .01%) of the cost spent on the Select Commission, are far more realistic and empirical than the final report issued by the Commission. The first report mentioned above analyzes the adminstrative burdens and costs involved in implementing a national employer sanctions law and concludes that enactment of such a measure would be a "drastic action". Also "the cost in terms of strained international relations, restrictions on freedom of the (U.S.) citizenry, and increased resources for law enforcement would be formidable". The report, after an analysis which is far more detailed than that presented by the Select Commission, concludes that "implementing a reasonably secure (identification) card system. . .will cost billions of dollars and take years to become effective".

TEMPORARY WORKERS

The Commission concluded that "continuation" of the present "H-2" tem-

porary worker program is "necessary" due to the "legitimate needs" of certain U.S. employers for a source of foreign labor (Final Report:227). The Commission does not oppose a "slight increase" in the existing temporary worker program and proposes, again avoiding any empirical analysis, a "streamlining" of the application process whereby domestic employers obtain approval from the federal government for the importation of foreign temporary workers (Final Report:228). At their final meeting, the majority of Commissioners indicated that by "streamlining" the H-2 program, they meant a reduction of the employers' responsibilities in locating domestic workers before importing foreign contract laborers. This policy decision ignored voluminous expert testimony and research on the total failure of the H-2 program, the horrendous suffering endured by H-2 workers in the United States, the economic dependence on foreign workers which develops in employers of H-2 workers, and the social and political ramifications of allowing for even "a slight expansion" of this program.

The concluding words of an extensive 1980 report prepared by the Congressional Research Service, Library of Congress, on temporary workers sum up the issue:

> If the decision is made to move in the direction of an expanded temporary worker program, among the principal lessons to be learned from our 22-year experience with the Bracero Program and from the European guestworker experience is that the seriousness, complexity, and far reaching consequences of such an undertaking can hardly be over estimated.[1]

The history of temporary worker programs in the United States is a history of massive human rights violations and suffering. The braceros, imported into the United States by the millions between 1942 and 1964, were "captive workers who were totally subject to the unilateral demands of employers. . ." (Briggs, 1980:4). Since the termination of the now discredited Bracero Program, the United States has continued to import temporary foreign workers under the "H-2" program. It is beyond dispute that the H-2 program has had the unintended effect of depressing wages and working conditions in the United States (*See, e.g.*, Medoff and Abraham, 1979; Department of Labor, 1972:33; Miller and Yeres, 1979). It is also beyond dispute that H-2 workers currently in the United States suffer tremendous civil rights violations and, as recognized by the Department of Labor, can be made to work for lower wages and under depressed working conditions "because they fear repatriation" (Department of Labor, 1972:37).

[1] Temporary Workers Program: Background and Issues, Congressional Research Service, Library of Congress, p. 120 (Feb. 1980).

From the standpoint of enforcing the labor rights of these temporary workers, the existing H-2 program has been a total failure (*See*, Schey, 1981). Leading proponents of a U.S. temporary worker program have pointed out that the present H-2 program allows employers to recruit and exploit "indentured labor. . ." (*See*, Sinkin, Weintraub and Ross, 1980). Any move to increase the existing U.S. H-2 temporary worker program should recognize that while the Western European temporary worker programs were "largely uncontroversial" during the 1950s and early 1960s, in the 1970s they were "exploding as a socio-political issue. . ." (Subcommittee on Immigration, Citizenship and International Law, 1975:17). Interestingly enough, while proposing a billion-dollar program to stem the flow of migration into the United States, the Select Commission does not oppose a "slight increase" in a temporary worker program which undoubtedly serves to precipitate greater illegal migration into the United States (Schey, 1981:9). There is strong empirical data which indicates that temporary worker programs "compound the problem of illegal migration rather than solve it" (Miller and Yeres, 1979:38). The Western European experience casts doubt upon "the starting assumption of a foreign worker policy that the programme and its workers are temporary. . .[M]illions of supposedly temporary foreign workers and their dependents have become long term and permanent residents of Western Europe" (Miller and Yeres, 1979:16).

Those employers who urged the Select Commission to support a continuation or "slight increase" of the exisiting H-2 program have not established "the existence of a demonstrated need in the labor market" (Briggs, 1980:16). When growers are currently able to claim that domestic workers cannot be located for particular harvest seasons, one need look no further than the insufficient recruiting efforts required under current Department of Labor Regulations to explain this artificial shortage. While the Select Commission recommends a shorter recruitment period, the Florida Department of Commerce, which recruits U.S. migrant farmworkers in a leading labor supply state, has specifically expressed a need for a Department of Labor regulation requiring an expanded period (*See, Second Report of Plaintiffs' Representatives on Brennan Special Review Committee*, April 21, 1976, *NAACP v. Brennan*, Civil No. 72-2010, 360 F. Supp. 1066, D.D.C. 1973:6). While current recruitment efforts are limited to 60 days, the Department of Labor initially proposed a 90 day recruitment period "to allow the employment service system sufficient time to recruit U.S. migrant workers" [43 Federal Register at 10,307 (Mar. 10, 1978)]. At that time (1978) the Department of Labor admitted that even the 90 day period would "not be long enough to recruit" domestic workers from two supply states, Florida and Texas. "Streamlining" the H-2 program to most Commissioners meant reducing recruitment time and efforts. In fact, as noted above, the Department of Labor itself has conceded that expanded

recruitment efforts would result in the location of domestic labor. No available empirical data suggest an economic need for continuation or expansion of the H-2 program. The program should not be "streamlined" to reduce either the geographical range of recruitment or the time period during which recruitment must be undertaken. If anything, efforts should be made to phase out the existing H-2 program.

INS ENFORCEMENT ACTIVITIES

Perhaps the most disturbing aspect of the Select Commission's final report is its failure to address seriously the massive national origin discrimination evident in current INS enforcement activities. A brief review of available data conclusively establishes that INS has totally abrogated its enforcement responsibilities with regard to illegal migrants from virtually all areas other than those coming to the United States from Mexico, Central and South America. In essence, "white collar" illegal migration is ignored, while the focus of INS enforcement activities is aimed almost exclusively at Latin Americans.

Estimates of the number of undocumented immigrants in the United States vary widely. The Comptroller General of the United States has estimated the population to be between 3 and 6 million (*Illegal Aliens: Estimating Their Impact on the United States*, 1980). INS, commenting on this report, stated that an estimate of 4 million is more likely. A recent report prepared by the staff of the U.S. Census Bureau estimates that there are approximately five million undocumented immigrants in the United States today, and that approximately 45 percent of these come from Mexico. However, other facts indicate that the estimate of the number of Mexican undocumented migrants in the United States may be high. For example, the CENIET study estimates a Mexican undocumented migrant community in the United States of approximately 500,000 persons. Whichever figures are used, they shrink in importance when one considers that in fiscal 1979, INS's Non-immigrant Document Control (NIDC) System showed that over 1.8 million nonimmigrant aliens, very few of whom come from Mexico, had apparently violated the conditions of their visas by illegally remaining in the United States (*Controls Over Nonimmigrants Aliens Remain Ineffective*, 1980:27). The substantial discrimination against Mexican nationals in INS's enforcement priorities becomes clear when one considers the figures mentioned above and compares them with official INS data which indicates that more than 92 percent of all apprehensions involve Mexican nationals and approximately 92 percent involve persons who entered the United States without inspection (*i.e.*, only 8% of all apprehensions involve nonimmigrants who have overstayed their visas).

In essence, the Select Commission findings would perpetuate an INS enforcement system aimed almost exclusively at the nationals of one country

who, perhaps not so coincidentally, are mostly uneducated, poor and nonwhite. The United States General Accounting Office has recently reported on INS's failure to take any "action to determine the magnitude of the problem of non-immigrant overstays in the United States" (*Controls Over Nonimmigrant Aliens Remain Ineffective*, 1980:26). INS officials "generally agree" that the NIDC system, the major program of the agency to track nonimmigrant visitors, offers "little prospect as an enforcement tool as it presently exists. . ." (Controls 1980:27). When INS investigators recently attempted to verify the status of 3,734 nonimmigrants who had illegally overstayed their visas, a project requiring 8,700 staff hours, only four (4) deportable persons were found, 2,181 persons could not be located, and INS was not able to verify whether an additional 1,257 had departed the country (*Controls. . .*1980:27-28). On the other hand, INS officials, sweeping through factories, farmlands and residential communities in the southwest presently apprehend approximately one million Mexican nationals each year who are forceably repatriated to Mexico. The Select Commission studiously ignored the tremendous discrepancies which surface upon an examination of this data. While spending a good portion of their report on the need to strengthen the U.S. Border Patrol, which almost exclusively is involved in arresting and transporting Mexican nationals, the Select Commission devotes little more than one page to a highly superficial discussion on how INS should improve its computer capability to track nonimmigrant visitors who overstay their visas. The Select Commission does not suggest how INS's existing NIDC system should be modified or improved. Therefore, while nonimmigrant visitors who remain in the United States illegally in the future could continue to expect no interference in their residence from INS, Mexican nationals would face additional "censor systems and night viewing devices", more "light planes and helicopters" and "Regional Border Enforcement Posts" (*Controls. . .*1980:49-51).

An additional issue is raised by the obvious discrepancy between available data on the numbers of undocumented migrants in the United States as a function of national origin and INS enforcement statistics. To the extent that the Select Commission identified any negative aspects of illegal migration, these seem to revolve around the ability to exploit this segment of the population. To the extent that job displacement and wage depression may occur this would clearly result from employers' ability to extract cheap labor from undocumented workers. To the extent that our concern centers on the quality of life experienced by undocumented residents of this country, our attention would again return to the exploitation factor. Clearly, the key ingredient facilitating the exploitation of undocumented residents of this country lies in the deportation power of INS. It is precisely the power to deport and its use which forces persons to live an underground existence, to accept low wages and working conditions without complaint, to acquiesce

in substandard housing, and to forego access to our judicial system to remedy civil rights violations. Mexican nationals in the United States without authorization from INS have in large part become the exploitable, pliable workforce so attractive to U.S. business interests precisely because of the selective manner in which they have become the target on INS enforcement tactics. Commissioner Rose Ochi states in her "Supplementary Statement" that "although this nation embraces the principle of anti-discrimination and constitutional safeguards, in the area of immigration law enforcement and administration there still exist blatant contradictions with the basic values of our democracy that are widely acknowledged but benignly ignored" (Final Report:38). Commissioner Cruz Reynoso in his "Supplementary Statement" states:

> [The Select Commission Final Report] approves current enforcement priorities. In fact, most of the entire enforcement budget goes to abate the flow of the fifty percent Mexican undocumented immigrants and only a small portion to deal with the non-Mexican (much of it European) undocumented.

Judge Reynoso was correct in concluding that implementation of the Commission's proposals, or for that matter a continuation of current policy, will "drive the undocumented, particularly the Mexican undocumented immigrant, further underground" (Final Report:399-400).

CONCLUSION

In the final analysis the Select Commission gathered a large volume of public testimony and expert research but failed to analyze this data and incorporate it into coherent policy options. Staff recommendations and Commission votes were therefore ultimately based on an inadequate factual and analytic record. Highly complex questions, such as where to set a cap on lawful immigration, how to "streamline" the "H-2" temporary worker program, how an employer sanctions law would operate and the precise costs involved, etc., were approached in a manner aimed more at winning public and congressional acceptance rather than in a search for empirical truths.

Any serious evaluation would have first carefully studied the multiple factors which precipitate migration into the United States. The poverty-related "push" factors in some countries may be better understood in relation to unequal distribution of income in those countries than to the level of per capita income. Considering geographical factors, those countries with the lowest per capita incomes are not necessarily the countries from which the larges number of migrants enter the United States. Migrant traditions need to be more carefully explored along with the possible relevance of

social, commercial and political ties between the U.S. and various foreign countries as these may relate to increased migration from those countries into the U.S. Some of the major source of U.S. immigrants, such as India, Korea, Taiwan and the Philippines, have for many years had close social, economic and political ties with the United States. Massive amounts of U.S. capital have moved into many of those countries which now supply the largest numbers of immigrants to the U.S. Further study needs to be undertaken on the degree to which the "Americanization" of these countries leads to heightened social and economic expectations which people believe can most easily be obtained in the United States. Certainly with the massive numbers of nonimmigrant visitors who remain illegally in the United States, attention should not remain riveted on the question of Mexican migration into the United States.

All realistic observers recognize that any solution to this country's immigration dilemma will be a long-range one requiring fundamental structural changes in those sectors of the U.S. economy which historically rely upon foreign labor and, perhaps to a lesser extent, in the social, political and economic conditions in sending communities. No realistic assessment anticipates a solution in the next decade. Policymakers may do well to focus their immediate attention on short range solutions aimed at reducing the suffering now endured by undocumented immigrants living in the United States. Short-term goals should be aimed at insuring that undocumented workers in the United States are provided basic rights and protections to reduce their present state of exploitation. The *New York Time* recently examined the treatment of immigrant workers in America's rural areas and found their condition amounted to "virtual slavery. . ." (*New York Times*, Oct. 19, 1980). Stories of beatings, imprisonment by ranchers, payments well below minimum wage, critical health problems and exploitation of newly settled and migrant refugees abound in the testimony and written submissions provided to the Select Commission on Immigration and Refugee Policy. The Ku Klux Klan is terrorizing undocumented migrants and refugees in Texas and complaints of physical brutality against undocumented migrant workers are on the rise. Every day of the week U.S. citizen children come home from school to find that their Mexican national parents have been apprehended and deported by INS. Like a blinded giant the Immigration Service continues to throw the weight and power of its resources into deporting Mexican nationals who return almost immediately through our "revolving door" border. At the same time applications for lawful immigrant status are massively backlogged with the agency, substantially adding to the population of undocumented immigrants in the country.

If in fact a comprehensive solution lies only in the distant future, there are few grounds upon which to rationalize current policies which have done

little more than institutionalize the ability to exploit, manipulate and brutalize the undocumented communities, particularly those made up of Mexican nationals residing in the United States.

REFERENCES

Briggs, V.
1980 *Foreign Labor Programs as an Alternative to Illegal Immigration into the U.S.: A Disseniting View.* Center for Philosophy and Public Policy, University of Maryland.

Bustamante, J.A.
1976 "Structural and Ideological Conditions of the Mexican Undocumented Immigration to the United States", *American Behavioral Scientist*, 19(3) :364-376.

Controls Over Nonimmigrant Aliens Remain Ineffective
1980 U.S. General Accounting Office, p. 27 (Sept. 11).

Daniels, R. and L. Kitans
1970 *American Racism: Exploration on the Nature of Precedes.* Englewood Cliffs, New Jersey: Rutgers Hall.

Department of Labor
1972 *Review of the Rural Manpower Service*, p. 33.

The Global 2000 Report
1980 U.S. Government Printing Office, p. 1.

Gonzalez, L. and Gonzalez
1974 "El Hombre y la Tierra". In *Historia Moderna de Mexico, La Republica Restaurada.* Edited by Hermes. Mexico. p. 28.

Illegal Aliens: Estimating Their Impact on the United States
1980 General Accounting Office, PAD-80-22 (March 14).

Institute for Public Representation
1980 *Discriminatory Effects of Employer Sanctions.* Georgetown University Law Center, p. 9.

Kiser, G.C. and M.W. Kiser
1979 *Mexican Workers in the United States: Historical and Political Perspectives.* Albuquerque: The University of New Mexico Press.

McWilliams, C.
1968 *North From Mexico.* New York, pp. 221-222.

Medoff, J. and K. Abraham
1979 *An Economic Analysis of the Department of Labor's H-2 Program.* Harvard University and National Bureau of Economic Research. March.

Miller and D. Yeres
1979 "A Massive Temporary Worker Programme for the U.S.: Solution or Mirage?", World Employment Programme Research, Working Paper, International Labor Office, Geneva.

Piore, M.
1978 "The 'Illegal Aliens' Debate Misses the Boat", Working Papers for a New Society, p. 60. March/April.

Schey, P.A.
1981 "Opposition to a U.S. Temporary Worker Program", *Immigration Law Bulletin*, 2(1):7. January.

Sinkin, Weintraub and Ross
1980 *A Phased Out Guest Worker Proposal.* Submitted to the Select Commission on Immigration and Refugee Policy, October 9.

Subcommittee on Immigration, Citizenship and National Law
1975 (House Judiciary Committee), *Nonimmigrant Alien Labor Program on the Virgin Islands of the U.S.* (94th Congress) 1st Session. October p. 17.

The Select Commission on Immigration and Refugee Policy
1981 *The Final Report and Recommendations of the Select Commission on Immigration and Refugee Policy to the Congress and the President of the United States.* March 1.

Wachter, M.
1980 "The Labor Market and Illegal Immigration: The Outlook for the 1980's", *Industrial and Labor Relations Review*, 33(3): 342-354.

Zazueta, C.H.
1980 "Mexican Workers in the United States: Some Initial Results and Methodological Considerations of the National Household Survey of Emigration" (ENEFNEU), Working Paper, Center for Philosophy and Public Study, University of Maryland, pp. 45-50.

The Inner Workings of the Select Commission on Immigration and Refugee Policy: An Insider's View

Rose Matsui Ochi*

I welcome the opportunity to share my perceptions based on my experiences serving as a public member on the Select Commission on Immigration and Refugee Policy. I appreciate that I am the lowest person on the Commission's totempole and what I have to say, accordingly, will have the same relative weight and credibility. However, not being a public figure gives me the license to speak freely, so I can make up in candor for what I lack in stature in revealing to you the inner workings of the Commission's operations and meetings, and how, in my view, the Commission fell miserably short of fulfilling its promise.

To my knowledge, the establishment of this joint congressional/presidential Commission including public members to conduct a comprehensive review of existing laws, policies and procedures and to formulate administrative and legislative recommendations to congress and the president is a first. Such a composition recognizes the complexity and controversial nature of these issues, the universally held belief that reform is in order, the difficulty of the task due to the existence of many strong, diverse and competing interests, and the need for a thoughtful and balanced resolution. Thus a primary goal of the Commission was to seek to develop a consensus. The process itself was a unique experiment in public policy development. I will seek to outline how and why I believe the process was lamentably deficient.

Let's first examine the original intention in creating the Commission, to understand the congressional and administration commitment to the consensus building goal.

What was the real purpose behind the Commission? Was it possibly the intent to put off thorny sensitive issues and back burner any resolution until after the elections? Was there an objective of using the Commission to give a blessing to former legislative proposals which have failed a number of

* Executive Assistant to the Mayor of Los Angeles, Director of the Office of Criminal Justice Planning.

times before, as for example, employer sanctions, in hopes of bolstering their chances in the next go-around? The Commission also could have served as a buffer for elected officials representing proponents and opponents of no-win issues, guestworker for example, or dealing with emotionally charged topics, such as grounds for exclusion, outside of the political arena.

I am sure the purposes were mixed, but in any case, the goal of good faith consensus building in search of the common good, the dropping of advocacy roles, and the working as problemsolvers was never fully realized. Even if it were intended, it could not have happened because the staff did not seem to share this goal, and if they did, they did not know how to accommodate that need.

Before I explain, in fairness I should add that there are, of course, a number of other reasons which have contributed to the breakdown. Specifically, the charge was too enormous, the turnaround too short, and the lack of participation too prevalent by some Commissioners. Additionally, the elections brought about a change in administration and a shift in the party in power. As a result many chameleons appeared for either reasons of economic survival, desire to be on the winning side, and ego—and/or pragmatism influenced radical changes in the staff's orientation and prompted kow-towing to the new powers that be.

The staff was comprised largely of academics and bureaucratic functionaries or detailees of whom only a small handful ever had any firsthand experiences in immigration or refugee policies or programs. The staff in many ways was divorced from reality. Hence, their work was often lacking in feasibility or common sense, although theoretically rational. In addition to the lack of background in the substantive areas, there was no one knowledgeable in the science and art of staffing a commission. As a result, a persistent problem was the confusion in the appropriate role of staff *vis à vis* Commissioners. As a result, the staff undertook to make early policy decisions, probably due to the intermittent meeting schedule of the Commissioners. This was a mistake in judgment to attempt to have the Commission perfunctorily sign-off on staff decisions.

The first time this was publicly apparent was during the initial public meeting when the embarrassing rejection of a staff recommendation to conduct a research survey took place. Another instance happened at the second dinner meeting, when the Commissioners were presented with a full blown presentation of a secured means of identification before any preliminary discussion of the larger issue of inhibiting the flow of illegals and the relative advantages and disadvantages of the options available occurred. That evening several Commissioners explained to staff their expectations for meeting format, materials and procedures. This unfortunately was to no avail. Actually, in all commissions there exists tension between staff and body regar-

ding the division of responsibility in decisionmaking, but in this Commission the issue was never satisfactorily resolved. The Director did not accept the role as technician to facilitate the Commission's work. Instead, he saw himself as the 17th Commissioner. The Director, in earnest I am sure, believed it was his responsibility to identify what should be the consensus position and then saw as his job the education of the Commissioners, the public and special interest groups to his point of view. He seemed to treat those who disagreed as uncooperative dissidents. He just did not have a respect for differences of opinion. He tended to alienate those who challenged him. He also fancied himself as a politician versus an administrator. He had a need to maintain control; thus, he was reluctant to allow exchange of ideas among Commissioners.

Similarly, the Chair's style was likewise not amenable to consensus building. He had very strong views and refused to drop his advocacy role. He insisted upon making pronouncements of the better view on each and every issue. He did not facilitate discussion. Congressional members were not accustomed to this. They understood that give and take and compromise was the name of the game. Hence, the Professor and Reverend caused much frustration.

Being in constant disagreement, I was beginning to feel with all this teaching and preaching that surely I was either going to get an F on my report card, or be damned. At a time when no Commission votes had been taken, the Director and Chair were making public statements reported as being decisions of the Commission to the media. The taking of such liberties reinforced the intention to have the Commission play a rubber stamp role. This, too, created a great deal of consternation among all members.

An incident which got much media coverage was the decision to close the big show-down meeting for claims of national security. The need for secrecy was a big hoax. I was even asked if I had security clearance. At this meeting a document stamped confidential was handed out (parenthetically, the contents probably were not even eligible for this classification). In any event, there was no opportunity to read the materials presented, no analysis nor references were made in the discussion to the documents during the deliberations. It was a meaningless charade. I favored open meetings but I thought perhaps the closed meeting would allow Commissioners to drop their constituency representative role. However, it did not happen. We lost an opportunity for public participation and education of the complexities of the issues and the need for compromise.

A particular example of Machiavellian orchestration concerned the question of employer sanctions or a more secure means of identification of employee eligibility. From the beginning, it was clear the Chair was a champion of the national ID card. At every forum he promoted his point of view.

Yet when the votes were taken, interestingly enough, the eight Commissioners who supported the more secure means of employee eligibility verification were never polled as to which of the three options, including the universal card, they would accept. Because of this, the press incorrectly reported the outcome. Subsequently, there was an exchange of letters by some Commissioners complaining of the distortion and urging for the need to clarify. Letters distinguishing which secured means they supported were sent. Others waited until filing their supplemental views. In the end, there were not eight votes for any one of the secured means proposed. I suspect this was known beforehand. On the final report the Chair appears to have backed off on the national ID card. The objective of obtaining news editorial support and public acceptance of the notion was accomplished.

Returning to staff problems, because the Director spent large portions of his time as a spokesperson, other staff shortcomings arose. Staff without an administrator in charge affected in the short-term the decisionmaking process and the final report, and in the long-term the compilation of data, studies and testimony for posterity. Without a manager the staff had little direction and was left to founder on their own. Staff had little directed interchange between research, public affairs and legal units. Thus, each unit operated indirectly without an overall plan for interface of products. This affected all aspects of the staff's work. In regard to the public hearings, because no plan was prepared nor was there any intention to analyze testimony for the purpose of incorporation into briefing papers and decision memoranda, much valuable testimony was lost. The testimony was simply summarized for the record in the annual reports. It appeared to operate on a separate track. Staff seemed to perceive the political side of their role, that of public hearing as obligatory political catharsis. This was a shame and so unfair to those who sought to influence the decisionmakers. I was impressed with the time and energy individuals, organizations and practitioners put into their testimony. I can't begin to count all the issues and recommendations that fell through the cracks. How unfortunate indeed.

With respect to the research arm, that unit also operated without guidance. They had absolutely no notion of how research products would fit into the decisionmaking process and the final report development. A sizeable budget was spent on many studies that may titillate academia in the ivory towers but which have no real value to policymakers. I am not suggesting any improprieties or violation of government contract procurement—but it was peculiar that no researchers from the West, where these issues are critically important—were utilized. Likewise, the research never was incorporated into the decisionmaking process. Summaries of research were bound in a separate volume. It was no surprise that, because of this, ironically, some staff recommendations flew in the face of the Com-

mission's own directed study findings and conclusions—as for example, Notre Dame's study on employer sanctions. Additionally, by and large, all unsolicited studies and reports received by staff were simply catalogued and not used by them or analyzed for Commissioners.

The consultations took different forms. Some were merely information presentations by a series of experts, while others involved discussion and efforts to develop group recommendations. One of the most fruitful consultations was chaired by Justice Cruz Reynoso. The legal Task Force was charged by the Commission to recommend revisions of the Immigration and Nationality Act (INA). Initially the Director resisted the need for this area of study but after the Commission's expression of support for a comprehensive INA reform study group, the task force was convened. It was staffed by Sam Bernsen, former legal counsel of the INS, and Peter Schey, a noted expert in the immigration field. The weeklong session was attended by leading immigration experts across the country and key staff advisory and departmental representatives. All but a few were lawyers. This group was remarkable for they actually were successful on a multitude of issues to arrive at a consensus. To my dismay, because staff "didn't like it", the Task Force's recommendations did not all go before the Commission, but instead were relegated to the appendix of the staff report. The staff had an apparent distrust of lawyers and did not know how to use their expertise as technicians. Apart from the legal reform efforts, the lawyers on staff were not consulted over other policy options involving legal issues. This omission was brought to light because staff presentations often evidenced an obvious lack of knowledge of the law.

I would like to comment briefly on some substantive failures. A major void in the policy analysis was the failure to openly discuss certain political issues. While the Commission considered the need for international cooperation and responsibility to moderate migration pressure, they squeamishly refused to respond to my suggestion for a need to examine U.S.policies which contribute to the "push"; specifically, the correlation of foreign aid and military involvement and the migration of both refugees and immigrants along with an impact analysis.

The proposed amnesty program, based on a presumably accepted premise of the need for legalization as an honorable solution, lacks integrity. Fairness dictates a *caveat emptor* warning. On the other hand, perhaps the Commissioners' avoidance of determining waiver for grounds for exclusion makes some sense.

There was a strong enforcement bent that prevailed which logically extended points to the hypocrisy that abounded. The insistence that effective enforcement is in place as a condition precedent to amnesty is ludicrous. By definition if you effectively sweep up and deport all illegals, who are you

going to legalize?

The employer sanctions recommendation has a potential for discriminatory impact and the invasion of privacy. It is too costly and dangerous a proposal to permit for a symbolic solution that is unenforceable.

The temporary worker and new seed category together represent a two-faced policy which presents a moral paradox. Needed unskilled laborers and people of color from developing countries are allowed in via temporary workers or H2 programs. But, whitecollar skilled workers from developed countries are admitted as immigrants. It is high time we face the fact, in our democratic society, that we can no longer tolerate the separation of economic and political participation. If we find we are to augment whatever type of labor market, it should be provided by our immigration goals.

In the area of immigration goals we need to eliminate all vestiges of earlier racially exclusionary laws and avoid ostensibly neutral policies that have a predictable discriminatory impact. The Commission dropped the ball on INA revisions. This is inexcusable. In particular, to duck the grounds for exclusion that are widely acknowledged as arbitrary and obsolete was irresponsible.

There was a failure to bring order to a disastrous system. No built-in oversight was provided and the Commission missed the boat in not making interim administrative recommendations in INS operations and structures.

Notwithstanding aforementioned failures, all was not for naught. The Commission came about two years too late. There are pressures to do something now, but effective long-term solutions are nonexistent. The Commission's major contribution will be to stimulate needed research, focus the attention of the media, public and officials, and start the public debate.

I understand that the Director advised a coalition of special interest groups to not criticize the Commission report. That is absurd. It is sheer folly to think that his "baby" is going to be delivered without labor pains. Debate is exactly what is needed toward ultimately building a national consensus. Toward this end, I applaud your conference for bringing together the spectrum of interested and impacted groups for the purpose of hearing from all sides.

Where are we going? The President apparently has rejected an important Commission recommendation of no guestworker programs. He indicated that he is intrigued by Governor Clements' proposal and he intends to discuss the matter with Mexican President Lopez Portillo. The Alliance of National Committee for Full Employment made a prompt disapproval of his intentions. I believe the President will be surprised over the lack of con-

gressional support. There will be no quick resolution unless it is "backdoored" through an expanded H2 program. There will be antagonism from non-sunbelt states who resent their prosperity largely attributable to undocumented workers in the agriculture and tourist industry. I foresee a long stalemate on this question. The new Attorney General continues treating INS as a stepchild. He has made further cuts from an already underfunded agency—so nothing has changed.

The Attorney General's study group will likely recommend more study. Congress will probably ignore the comprehensive SCIRP package and will give priority to enforcement and employer sanctions. A coalition will also form to oppose these proposals, including many strange bedfellows—ethnics, business, civil libertarians and conservatives. I may be wrong but I don't see the new administration giving support to placing the burden and the onus on the business sector. Thus, there can also be an impasse on this issue as well.

Yet in all sobriety, I should like to suggest that this is OK. As we approach the 21st Century, this is not the time to repeat the mistakes of the past with a *Bracero II*, to enact unenforceable laws and to let an enforcement tenor get out of hand and return to abusive treatment of aliens.

No quick fix for complex issues will work. We need a comprehensive overhaul. Embracing "legislative retreads" is likened to rearranging the deck chairs aboard the Titanic. Piecemeal patching and cosmetic facelifts of a sinking vessel only further endanger its passengers by creating a false sense of security.

A more deliberate approach is warranted. It would be tragic to let the hysteria arising out of the present state of the economy and Cuban/Haitian problem dictate national policy. In the ensuing years, we need to develop bold, imaginative and progressive policy recommendations to congress and the American people that are consistent in the broader context of American history and international immigration history rather than resort to politically expedient perspectives.

In conclusion, while there are pressures to deal with immigration issues, there is currently inadequate research available to be able to form the basis for intelligent discussion and decisionmaking. Without analysis of empirical data and studies synthesized into policy options, it is impossible to address seriously the many complex issues involved in formulating public policy. Long range, coherent immigration policy development must begin with a foundational understanding of U.S. immigration and its domestic and international impacts. A fundamental recommendation of the Commission should be the need for further study and the wisdom of exercising due deliberate slow-down where answers are not known. Political expediency cannot substitute for caution in moving toward a resort to drastic measures.

Ill-advised solutions can cause disruption both at home and abroad and can have far-reaching implications regarding our nation as a democracy and as a leader in the world community.

The plight of our economy today, and the growing anti-alien sentiment, will likely promote a cry for restrictions and repressive actions. We must build coalitions with those who will refuse to abandon some of the time-honored principles of our democracy which have been proven during troubled times in our history.

Administering the Proposed Immigration Model: Implications for the Immigration and Naturalization Service

JOHN E. NAHAN*

My role within the INS is not as an immigration practitioner in the traditional sense of the term. Instead, I am a planner, or generalist if you will, who has spent over 10 years in the immigration field. Having participated in a number of the efforts that led to the establishment of the Select Commission's effort, I believe that it is a welcomed contribution to an area of vital concern. More importantly, immigration is something that we cherish in our national tradition. Moreover, we simply cannot escape its place in our country's ethos.

The completion of the Select Commission Report occurs at a particularly dramatic point in the annals of immigration affairs. While still in the throes of the Iranian student policy, we were also confronted with the reality of our country being a haven of mass first asylum—a situation we were somewhat helpless to control. These matters have focused further attention and significance on the role that immigration will play both in the affairs of our country and the interaction among the nations of the world. This leads to the inescapable conclusion that, if nothing else, the issue of immigration must be led by two prevailing considerations: courageous leadership about its importance, consequences and value for our country and the attendant need for educating the people about what we do know about immigration.

For the most part, I intend to discuss the new model. I must confess to interpreting this very narrowly. The new model is the proposed selection system for immigrants. Personally, I feel that this area of the report represents the most important and creative contribution to furthering the debate on immigration matters.

First, there is the issue of numbers. While the final determination on this matter will be decided by the Congress, the numbers proposed would not pose inordinate administrative difficulties for the Service. The recommen-

* Director of Planning, Immigration and Naturalization Service

dation to avoid total annual quotas also continues the necessary and desirable flexibility inherent in our current system.

Second, making a distinction between reunification of families and independent aspirants introduces further flexibility and diversity into the system. It promotes the goals of family reunification and meeting more critical labor needs. Some further flexibility in the matter of per country ceilings should also insure that higher preferences are accorded greater numbers of immigrants.

However, I would raise some *caveats* about the proposals. Even family reunification has its limits. Some of the recommendations widen the family further. It has been our impression that the family is extended enough. On the other hand, we are sympathetic to the enoromous backlogs that exist in some countries. Moving particular categories into the non-quota area may jeopardize the current flexibility and raise further demands for an overall cap.

Another concern lies with how independent immigrants will be selected. Some streamlined method must be found. The current labor certification methods would not seem to be adequate for a new independent category.

The issue of independent also raises the question of how we are to handle adjustment of status. The Service has favored narrowing the grounds for adjustment and confining it to the family categories. This notion is premised on the new independent category which provides some relief for labor needs and a straightforward way of achieving it. Whatever the change, we expect some increase in adjustment cases.

All in all, we believe the new model to be an intriguing proposal. It will introduce some additional complexity into the current system; however, we are prepared to meet it. I might add that the previous experience with the amendments of 1965 has taught us a lesson. Some additional resources will be required. As a result, we are endeavoring to develop internal means for providing some of the relief.

Anticipating many of these recommendations, the Service embarked on a long-range plan. It is an expression of our broad goals and the most important changes that must be made to further the goals. We contemplate an era of diminishing resources. The only way to realistically deal with such a situation is to prepare for it.

Many of the Commission's recommendations in other areas are reflective of the directions we are already pursuing. We support administrative naturalization and elimination of language requirements for the elderly. The savings here can be applied to adjudications resulting from the new selection system. We also support modified exclusion criteria and improved means of inspection, as well as further outreach efforts and the assistance of

the voluntary aid groups. The experiences we have already gained through our somewhat modest outreach efforts have contributed enormously toward developing new procedures and expedited immigrant processing.

Additionally, there are two other areas of concern: phase in and nonimmigrants.

We agree that a phased system is the most prudent way to proceed with the implementation of the recommendations. The phased approach discourages further illegal migration during the legalization period. Further, it provides for clearing the current waiting list of intending immigrants before we implement a new system. This is a matter of equity and makes administrative sense as well.

Moreover, we need a more coherent view of nonimmigrants. Through the advent of the jet-age, we have moved into an increasingly interdependent world. We must contemplate the prospect that some may wish to spend increasing periods of time in the country without making an affirmative decision about permanent residence. I believe the public perceptions about students in general, and the Iranians specifically, argue for further examination of the movement of people.

As immigration reform proceeds, I hope that you will continue your important contribution to the issue. Clear choices lie ahead and they will contribute enormously to a fairer and more humane administration of immigration law.

We cannot underestimate what immigration choices tell us about ourselves, as well as our capacity for dealing with the challenges that face us.

Administering the Proposed Immigration Model: Implications for the Department of State

CORNELIUS D. SCULLY III*

From an operational standpoint, the portion of the Select Commission report of greatest importance to the Department of State is Part III, which deals with the proposed new system of numerical limitations and immigrant selection. It is here that any administrative burden which may fall upon the Department will originate and it is here that the Department's traditional responsibility for the administration of the numerical limitations on immigration gives it a measure of expertise.

The Commission first recommended retention of the "immediate relative" class of immigrants, outside any numerical limitations on immigration. Since 1965, "immediate relatives" have included the spouses and children of United States citizens and the parents of adult United States citizens. The Commission would add to these groups the adult unmarried sons and daughters of United States citizens (not now granted any immigration benefit). The Commission believes that the addition of these two groups to the "immediate relative" class will not significantly increase the annual total of "immediate relatives" and this is probably so. Immigration under the current first preference is relatively small and has not been growing significantly. Logic dictates that the number of grandparents of adult United States citizens who are not also the parents of an adult United States citizen will be small.

The Commission then recommended that the annual limitation on immigration be increased from 270,000 to 350,000 and that there should be an additional 100,000 added to the limitation for a five-year period. I will comment later on the import of these increases.

Turning now to the apportionment of the numerical limitation among the various immigrant classes, the Commission would make a number of significant changes. First, relatives would be separated from independents

* Director, Office of Legislation, Regulations and Advisory Assistance.

into what amounts to two distinct sublimitations. From the tenor of the recommendation and accompanying comments, it seems that the Commission desires that there be no connection whatever between the two sublimits. This would presumably prevent visa numbers not used for immigration by relatives from being used by independents and vice-versa. Such a system carries with it a very real possibility that visa numbers would go unused in a year even though an unsatisfied demand for immigration existed. I must admit that, even under the current system, it is statistically possible that this could occur. The precise combination of facts which would produce such a result under the current system is, however, sufficiently unlikely to make the possibility an extremely remote one.

Within the relative class, the Commission recommends a "substantial" allocation for the spouses and children of permanent residence aliens, and also that there should be no per country limit on this class. This class is similar to, but slightly more restricted than, the current second preference class. The restriction involves elimination from the class of the adult unmarried son or daughter of a permanent resident (who would be given a lower status within the new relative class). While the Commission does not define the word "substantial", it must be taken to mean at least 40 percent and perhaps as much as 50 percent of the overall total. I make this assumption because the current second preference class is effectively entitled to about 40 percent of the current overall limit (26 percent plus the portion of first preference not required by first preference immigrants). Thus, it is likely that the Commission contemplates that between 140,000 and 175,000 be allocated for this class out of the annual 350,000.

It may be pertinent to note at this point that an allocation of this size may far exceed demand. I recognize that this may seem a curious statement, given the existing backlog in the second preference and the great attention which has been paid to the poor spouses and children of permanent residents who have been made to wait five or seven years. I will, therefore, attempt to clarify my comment. Second preference status is available to the spouse, the unmarried son or the unmarried daughter of a permanent resident. In addition, within each preference classification, the spouse and children of a petition beneficiary are entitled to the same status and same order of consideration (priority date, in our administrative jargon) as the petition beneficiary. In such a case, the petition beneficiary is referred to as the principal applicant, and the spouse and children are referred to as derivative applicants.

Thus, to use an example, the spouse and children of the beneficiary of an approved fifth preference petition filed on November 10, 1973 are derivative fifth preference applicants and are entitled to a priority date of November 10, 1973, just as is the petition beneficiary. Moreover, this

derivative entitlement exists whether the spouse and children immigrate at the same time as the principal applicant or later. Let us pursue this example. Suppose that the petition beneficiary (principal applicant) immigrated to the United States in 1976 on the basis of the approved fifth preference petition, leaving behind for personal reasons the spouse and children. Suppose that now the family has at last decided that the spouse and children will follow to join the principal applicant in the United States. The spouse and children are entitled to consideration as derivative fifth preference immigrants with a priority date of November 10, 1973. This is so because they are entitled to the same preference status and the same order of consideration as the principal applicant.

Of course, in this example it is also possible that the principal applicant (who became a permanent resident in 1976) could have filed a second preference petition for the spouse and children. This could have been done, but it would not be necessary unless over the years change in the law or in patterns of demand for immigration had caused the fifth preference visa issuance cut-off date to recede to the point that immigrant visa numbers were not available for fifth preference applicants with a November 10, 1973 priority date.

This derivative entitlement exists as to spouses only if the marriage predated the permanent resident's admission for permanent residence and, as to children, only as to children born of a marriage which pre-dated the permanent resident's admission for permanent residence. No such derivative entitlement exists for the spouse of a permanent resident where the parties were married after the permanent resident's admission for permanent residence or for the child born of such a marriage. In the latter case, the only status to which the spouse or child would be entitled is second preference status and, thus, petition filing would be necessary.

In effect, then, the second preference status has been meaningful and necessary only in three situations:

> 1) a permanent resident marries after admission and seeks immigrant status for the spouse and any children of that marriage;
>
> 2) a spouse of a permanent resident who was married to the permanent resident prior to his acquisition of that status but did not immigrate at that time [or a child born of that marriage] now seeks to immigrate relying upon derivative entitlement through the principal applicant only to find that a change in law or in patterns of demand has caused the visa issuance cut-off date in the applicable classification to recede to the point that is is not possible to immigrate expeditiously relying upon the derivative entitlement; or
>
> 3) an adult unmarried son or daughter of a permanent resident seeks

to immigrate and cannot use a derivative entitlement because he or she is no longer a child within the statutory definition of child.

Of course, all three of these situations can and do arise. The first and third, however, cannot possibly account for a significant quantity of immigrants—certainly not 140,000 to 175,000 per year. Accordingly, it is necessary to look to the second situation to find substantial demand. The second situation arises only relatively infrequently. Prior to 1977, it had arisen only in the Eastern Hemisphere in the early period (1968-1970) after the completion of the three-year transition provided for in the 1965 Amendments to the Act. Under the Eastern Hemisphere system, from 1970 or so until 1977 there was considerable stability of demand and patterns. Second preference demand remained well below the amount of visa numbers available and increased only slowly during that period.

Beginning on January 1, 1977, however, the system as a whole has been in a state of near-constant flux. First, the 1976 Amendments applied the Eastern Hemisphere system to the Western Hemisphere as well, incorporated all Western Hemisphere aliens on the waiting list into the Western Hemisphere nonpreference class and added the provision [section 202 (e)] for *prorata* allocation of visa numbers throughout the preference classes for natives of a foreign state or dependent which had reached its maximum in the preceding fiscal year. Less than two years later, the two separate (but by then identical) Hemispheric systems were merged into a single worldwide system. Less than two years after that, refugees were removed from the preference system, the annual limitation was changed from 290,000 to 280,000 for the fiscal year in progress at the time and to 270,000 for future fiscal years and the percentage reserved for the second preference was increased from 20 percent to 26 percent. Moreover, throughout this period proceedings in the *Silva* case continued. For a period of time, the Executive Branch ran its own "recapture program" which was eventually halted by the Court and then resumed on a different basis, as ordered by the Court.

Each of these events has had its effect on the stability of the system. Those who follow the monthly Visa Office bulletin showing the availability of immigrant visa numbers will have noticed a number of upheavals—reversals of form, if you will. There has been little, if any, consistency. It is this combination of events which has produced the existing large backlog of second preference immigrants as individuals found themselves blocked in the classification to which they were entitled derivatively and, naturally, sought a classification in which their chances would (or, at least, might) be better.

Is this state of affairs likely to persist? One can only hope not, and barring unforeseen events, I would not expect so. If a new immigration law re-

tained the provision for derivative entitlement for the spouse or child of a principal applicant, and I feel it will do, and if there is stability in the system created by the new law, in the sense that it is not changed incessantly, new demand for second preference immigration will subside and eventually the allocation contemplated by the Commission will very likely exceed the demand by a significant amount.

The question immediately arises as to when demand in the second preference might subside. The answer to this question depends largely upon action taken on an entirely unrelated recommendation of the Commission. The Commission has recommended a broad amnesty provision for aliens illegally in the United States. Its exact terms have not been spelled out, but clearly the Commission feels that mass deportation is impossible and that leaving these aliens in limbo is unsatisfactory. It is not certain, however, that the amnesty will take the form of granting permanent resident status to qualify aliens; some, at least, could be granted only temporary worker status.

The Commission does not recommend granting special status to spouses and children of the aliens illegally here who are themselves still abroad. Thus, these aliens would have to be documented for entry under the proposed new immigration system. The only classification in which the spouse or child of an amnestied alien who acquired permanent residence could qualify would be the proposed new category for the spouses and children of permanent residents (the proposed successor to the present second preference). It is simply not possible to speculate about the size of this group at this time. No one really knows how many aliens are now here illegally; no one can really predict how broad the amnesty provision may be, and it is virtually impossible to foresee how many overseas spouses and children the amnestied aliens will have. All one can say now is that the overseas spouses and children will constitute potential applicants under the proposed new classification for spouses and children of permanent residents.

Obviously, the size of this group will determine how long demand in this proposed new classification will remain high.

After this initial relative class, not subject to the per country ceiling, the Commission would provide for four additional relative classes, all of which would be subject to a per country ceiling. These classes are:

1) the adult unmarried sons and daughters of permanent residents;
2) the married sons and daughters of citizens;
3) the siblings of adult citizens; and
4) the elderly parents of an adult permanent resident.

Two of these classes are within the present preference system; the other two are new.

The Commission then recommended the creation of a separate independent category. Initially, the Commission recommended the continuation of the existing provisions for "special immigrants", a series of statistically insignificant classes which, like the "immediate relatives", are outside the numerical limitations.

The Commission then recommends that there be a small allocation of visas for immigrant investors. The Commission also recommends that there be a small separate allocation for certain highly distinguished professionals, scientists and artists. Notice that the Commission is not recommending continuation of the current third preference class. The Commission sees this allocation as being reserved for only a small portion of what is now known as third preferences, *i.e.* those professionals, scientists and artists who are truly of exceptional merit when measured against their peers.

All other nonrelatives would be included in the general category of "other independent immigrants". The operational effect of these recommendations cannot be determined because the Commission did not pronounce itself upon the critical issue—the qualifying test.

The current system uses the labor certification requirement as the qualifying test. A nonrelative may qualify for immigration only by obtaining a labor certification or by making an affirmative showing that he is within one of the groups prescribed by regulations as not required to do so. These groups now consist primarily of immigrant investors, for whom the Commission would make separate statutory provision, and those who can affirmatively establish that they neither need nor intend to seek gainful employment. This provision has been used by retirees and also, to a lesser extent, by dependent collateral relatives such as an elderly maiden aunt.

It is apparent from the Commission report on this subject that there was substantial disagreement, even controversy, about this issue. Interestingly enough, however, there seems to have been virtually no consideration of a very significant operational aspect of this issue, an aspect so significant that it could be said to have policy implications. Prior to 1965, the labor certification provision was negative in its operation. An alien was not excludable under section 212 (a) (14) of the Act unless the Secretary of Labor acted to bar workers in the field in which the alien worked. Moreover, prearranged employment was not required for initial qualification. Ultimately, the alien might well have to obtain an offer of employment in order to meet the public charge requirements, but this occurred at the final stage of the process and had nothing whatever to do with registering on an immigrant waiting list. Since 1965, there has been an affirmative requirement for certification by the Secretary of Labor—nonrelatives are ineligible

unless the Secretary specifically grants approval—and in most cases an offer of employment has been required for initial registration for immigration.

By the time the 1965 amendments entered into force, there were approximately 750,000 aliens registered as nonpreference immigrants under the old national origins quota system. These were applicants who would be characterized as "independent immigrants" under the Commission's proposed scheme. Given the fact that the total of the national origins quotas was about 150,000 and that a great portion of that total was used by the preference classes, it can be seen that there was a considerable unreality in this situation. Many of those 750,000 would never have had an opportunity to immigrate in their lifetimes. They were in reality nothing more than names on a list. To get on the list in the first place they simply communicated with a consular officer, usually by mail, and stated that it was their desire to immigrate to the United States.

Those Commissioners favoring a return to the pre-1965 system as being more open and providing broader opportunity are, I believe, ignoring the operational realities. First, such an "open registration" system is likely to produce a waiting list of a size so great as to render the "opportunity" meaningless. As I have said, there were about 750,000 aliens registered as nonpreference immigrants at the time the 1965 amendments went into effect. To a certain extent, that number is misleading since they were not all on a single waiting list. There was a separate nonpreference waiting list under each quota. Under a worldwide system, there is only a single waiting list per classification. Thus, there would be a single worldwide waiting list. Moreover, there is every reason to believe that the number of registrants under an open registration system now would be considerably greater than it was then. For one thing, prior to 1965 natives of the Western Hemisphere were not included under the national origins quota system and, thus, did not have to register for the old nonpreference quota status. Under the proposed new scheme, they would be subject to the limitation and would be included in the waiting list. For another, the last sixteen years have seen both a substantial increase in population everywhere, most particularly in countries with high immigration demand. Finally, as has been said frequently, knowledge of the possibility of immigration to the United States, by legal or illegal means, has become much more widespread today than it was sixteen years ago.

If the number set aside for the independent category under the proposed new scheme approximated 100,000 and the waiting list were 750,000 (as it was in 1965) the waiting period would be seven and one-half years. Every 100,000 additional registrants would add a year to the waiting period. The greater opportunity that a system of open registration would create would cease to mean much if ten, fifteen or twenty years must pass before the op-

portunity becomes available. It is said that justice delayed is justice denied. It can equally be said that opportunity delayed is opportunity denied.

In conclusion, I will comment upon the proposed new totals. An increase of 80,000 per year (180,000 during the initial five years) may very well be "modest", as the Commission has indicated, when viewed from a substantive standpoint. From an operational standpoint, however, it is anything but "modest". In fact, it constitutes an increase in caseload of approximately 30 percent (66% during the five-year period). Increases of that magnitude are clearly beyond the capacity of existing consular staffs to absorb. Only a significant increase in both officer and clerical/support staff could deal with such an increase. Without requisite staff augmentation, increases of that magnitude would in all likelihood cause the system to break down.

A collateral, but not unimportant, consideration is the space factor. It is not enough to provide additional staff to deal with additional caseload; additional working and waiting room space is also necessary. Several years ago, we experienced the phenomenon of the inability of one consular post to accept the assignment of needed additional personnel to its visa section because it had no space in which the additional personnel could work.

Even assuming that authorization and appropriations for the requisite additional personnel and physical plant accompanied the legislation establishing the increased limitations, there would be a delay in implementation. Recruiting and training personnel takes time and construction or acquisition of physical plant takes more time.

In addition, certain features of the proposals raise specific additional problems. The elimination of the per country ceiling on immigration by spouses and children of permanent residents and, presumably, on the additional 100,000 per year for the first five years will cause shifts in workload. These shifts will be toward posts at which the demand for immigration is heaviest and away from the posts with lesser amounts of demand. Current staffing patterns take into account workload under the current system, with its per country limitations. Thus, not only will there be increases in staffing requirements as I have mentioned above, but there will be a realignment of the locations at which the staff increases are needed. This fact will aggravate problems of physical facilities, since increased requirements due to overall increases will be augmented at certain posts because of these shifts.

In summary, the administrative task of recruiting, training and realigning personnel and providing the necessary physical facilities to enable them to carry out their duties would be a formidable one.

Administering the Proposed Immigration Model: Implications for Health and Human Services

KAREN M. DEASY*

I was asked to talk about administering the Select Commission's proposed immigration model and to discuss its implications for the Department of Health and Human Services (HHS). The implications for HHS at this time are largely unknown. As you may be aware, President Reagan has established a Cabinet-level Task Force on Immigration and Refugee Policy to consider the immigration issues of the country and to set forth recommendations on how the Reagan Administration should address them. Until this Interagency Task Force completes at least its initial work, HHS cannot gauge precisely what policy direction its programs will take. HHS is, of course, an active participant in Interagency Task Force deliberations, but predicting the outcome of decisions stemming from Interagency Task Force work is premature.

With this as a caveat and regular reference point, I will address the recommendations of the Select Commission which bear directly on HHS policy. First, however, it may be helpful to summarize the HHS role in immigration.

As suggested by its name, HHS has broad responsibilities to help meet the basic health and social service needs of the people in this country. For example, the Department's role is to help ensure that adequate health care is available throughout the country and that people living here have access to that care. Thus, even where the Department does not target programs and funds specifically to immigrants or refugees, such as in funding programs for disease control or community health clinics, HHS programs and initiatives do, in fact, affect those groups.

Interestingly, the Select Commission report does not address the full range of HHS responsibility or recommend what approach the Department should take on issues such as health care and services for undocumented

* Special Assistant to the Secretary, Department of Health and Human Services.

aliens or for immigrants admitted through the normal process. Rather, the work and report of the Select Commission concentrate on the HHS role in assisting refugees and others who seek asylum in this country, such as the recent Cuban and Haitian entrants. Therefore, I will parallel my remarks and confine my overview to the Department's more prominent programs to assist these two groups.

Last year the Congress enacted the Refugee Act of 1980, which, for the first time, established a permanent U.S. policy toward refugees and a program of resettlement assistance. The law established the Office of Refugee Resettlement within HHS and authorized it to encourage and enable refugees to become economically self-sufficient as soon as possible. The Department manages this program in consultation with the U.S. Coordinator for Refugee Affairs, who reports to the President and the Secretary of State, but not to the Secretary of HHS.

Our ongoing consultation with the U.S. Coordinator is crucial to effective federal administration, since HHS, by law, has significant resettlement program responsibilites and the U.S. Coordinator, by law, has broad responsibility for developing an overall refugee admission and resettlement policy. Also, the U.S. Coordinator is to coordinate all domestic and international refugee program efforts and to make recommendations to the President and the Congress on the refugee policy and levels of admission. Thus, HHS participates but does not itself set the policies that ultimately generate the need for its programs.

As mentioned, the refugee assistance program established under the Refugee Act is designed to assimilate refugees as quickly and effectively as possible and to minimize the burden refugees may place on states and localities. Toward these goals, the program reimburses states for direct cash and medical assistance to needy refugees and also provides funds for English language training, vocational training and a variety of social services.

Eligibility for this special assistance, though, is generally based on states' assessment of the refugees' needs and the likelihood that they will benefit from the services being offered. All of these activities help to ease the refugees' adjustment to American society and to allow them to become independent and self-sufficient. At the same time, this special federal aid reduces the states' financial costs associated with assimilating refugees into our society.

In addition to our responsibilities for refugees, the Department, through its Cuban and Haitian Task Force, plays a significant role in assisting the Cuban and Haitian entrants who arrived in substantial numbers last year. These entrants have not been determined refugees, and their status in this country is still pending.

There are two major parts to the Cuban and Haitian entrant program. The first is managing reception and processing, wherein the Department has government-wide responsibility for coordinating Cuban and Haitian activities and for operating resettlement centers such as the one at Fort Chaffee, Arkansas. The second part is domestic assistance, wherein the Department provides similar benefits and services to Cuban and Haitian entrants as are provided to refugees under the regular refugee programs. The Department's activities in these areas are authorized, not by the Refugee Act of 1980, but rather by special legislation enacted last fall to deal with the Cuban and Haitian emergency.

Against this background, I will address the Select Commission recommendations which may affect the HHS role in these two specific areas.

With respect to planning for mass asylum emergencies, the Select Commission recommended that an interagency body be established to develop procedures for handling possible mass asylum emergencies, including developing contingency plans for opening and managing federal processing facilities.

The implications for HHS depend, in part, on whether or not a formal body is established. But even if so, the HHS implications would vary, depending on whether future processing facilities are viewed as transition centers for people who will be placed eventually in U.S. communities or viewed strictly as holding centers pending asylum claim review. In either case, HHS may have responsibility for providing health care at the reception centers; but whether HHS will have overall camp management responsibility (as we now do for the Cuban and Haitian sites) would probably depend on the purpose of the center and the status assigned to those arriving.

Confronting these kinds of issues is a major Interagency Task Force activity, in which HHS, the Departments of State and Justice and several other federal agencies are engaged.

The Select Commission also put forth several recommendations on refugee resettlement.

First, the Select Commission reaffirmed the statutory goal of resettlement, which is to promote self-sufficiency and adjustment to U.S. life. Also, the Commission supported emphasizing language training and vocational counseling toward these ends. However, the Commission went on to propose several new eligibility procedures and to suggest sanctions for noncompliance.

Careful consideration, of course, must be given to how and when services are provided and under what circumstances support and services should be denied. Such consideration is now underway in the Interagency Task Force.

Second, the Select Commission endorsed the current programs and prin-

ciples of refugee resettlement. However, the Commission felt that changes are needed in the areas of cash and medical assistance, placement strategy and sponsor orientation.

Specific to HHS, the Commission recommended that stricter regulations be imposed on the use of cash assistance and that medical assistance for refugees be separated from cash assistance to the extent possible. Currently, refugees may receive one form of aid without the other, but most refugees needing assistance do receive both cash and medical assistance.

These issues are longstanding concerns of the Department and, in fact, the Department plans to release a notice of proposed rulemaking in the near future which will seek public comment on alternatives. Also, the Interagency Task Force is reviewing the issue. Therefore, it is simply too early to determine whether the Department will adopt the approach the Select Commission has suggested.

A related Select Commission recommendation is to consider extending federal reimbursement to states for refugee assistance. Under current law, refugees receive cash and medical assistance on a special basis during their first 36 months in this country and the federal government reimburses states for 100 percent of those costs. Thereafter, refugees receive benefits on the same basis as U.S. citizens and the federal government reimburses states for refugees on the same basis it would for nonrefugees.

Determining on what basis to assist refugees during their intial three years and possibly beyond is yet another complex and controversial area under Task Force review.

The remaining refugee resettlement recommendations of the Select Commission are directed to the U.S. Coordinator for Refugees Affairs rather than to HHS. For example, the Commission suggested improving orientation for refugee sponsors; involving states and localities in refugee placement strategies; and clustering refugees so that ethnic groups with similar backgrounds are settled in the same areas. The Commission also suggested establishing a program of impact aid to minimize the effect which a sizeable number of refugees in one area may have on the locality.

Because refugees are resettled initially by resettlement agencies funded by the Department of State, and because of the U.S. Coordinator's statutory responsibiltiy for coordinating government-wide efforts, the Coordinator is the appropriate focus for these recommendations. HHS works with the Coordinator in each of these areas, however, because of its ongoing domestic assistance program role. As with the other Select Commission recommendations, the Interagency Task Force is studying these suggestions for possible implementation.

As my repeated references to the Interagency Task Force suggest, the

group has a critical and sizeable task to accomplish in the coming months. Its early establishment, however, does suggest the importance the new Administration places on the critical immigration issues of this country.

The Proposed Immigration Model: Implications for the Private Sector

AUSTIN T. FRAGOMEN, JR.*

Like my predecessors at the podium today, I was somewhat disappointed by the report of the Select Commission, what we might call the model law. I would like to touch very briefly on a few areas where I feel there were very grave deficiencies. I had hoped that there would have been a great deal of original research that would have delved into and shed light on some very fundamental issues, issues for which the research available, in my opinion, does not provide an adequate basis on which to draft and effect legislation. I had hoped, for instance, that we would have been presented with some significant research on the impact of undocumented aliens, which would identify to what extent they are taking jobs Americans could fill; to what extent these aliens are working in particular occupational categories and in geographic areas where their absence would raise wages to the point that these jobs would become attractive to Americans; and to what extent particular jobs in the economy should be automated, thereby alleviating the need to rely on any person to do them. I had especially hoped that research would have indicated to what extent business would be forced to close, if undocumented aliens were prohibited from engaging in employment by a rigorous enforcement system on the part of INS.

On the issue of undocumented aliens, I found the Select Commission's apparent conclusion very curious: excepting the exploitation and the human suffering occasioned by the present system, the undocumented alien didn't appear to have the substantial and adverse economic impact that many people had originally suspected. In fact, in many cases it appeared that the undocumented alien has been filling job positions that couldn't be filled otherwise. For the Commission to make such an observation and, at the same time, to recommend a rigorous enforcement policy which, if effective, would eliminate workers in those positions that cannot be filled by Americans, and, further, to recommend a selection system which does not

* Adjunct Professor of Law, New York University School of Law and Brooklyn Law School, practicing attorney, Fried, Fragomen, Del Rey, Bernsen and O'Rourke.

allow either for adequate visa numbers in the independent category or for an expansion of the temporary worker program, suggests a level of analysis that is superficial and inherently contradictory.

Regarding the proposed enforcement program for INS, there remains the practical problem of how it would be funded. To implement the proposals for enforcement would cost an exorbitant amount of money. The report really proposes to seal the Mexican border. Anyone familiar with the Mexican border, which runs somewhere between 1500 and 2000 miles, could imagine what would be involved in sealing it: our country would have to build a new Great Wall of China. The United States couldn't even effectively keep infiltrators out of the 50 mile area of the DMZ, and we are proposing to seal 2000 miles of border. The cost of doing that in terms of manpower and sophisticated equipment would be absolutely prohibitive. And, considering the present administration's proposed budget cuts for INS, I would say this plan of enforcement is impossible.

Regarding the visa violator who enters the United States lawfully, the proposal is one with which none of us would argue. It suggests that at the time the alien comes into the country, his entry be recorded into the computer. Whenever he files for an extension or takes any action, that information would go into the computer. When he leaves, that too would go into the computer. Further, for the person who came into the United States without filing for an extension and who did not leave, the computer could furnish the address given upon entry. An immigration officer would then investigate what has happened to the alien. This, then, would be the exit control system. However, considering the number of visitors who enter the United States, I do not know how many additional officers would be necessary to implement such a system. Certainly the number would be in the thousands, and under the present budgetary constraints, this system could not be implemented. Once again, we are faced with an impractical solution.

We are left with another approach—to penalize the employers. The rationale for this is simplistic: if we penalize the employers, they won't hire undocumented aliens, and if the employers won't hire undocumented aliens, then the aliens will go away. That approach is cheap. Aside from all the issues that have been raised about whether it would or would not engender discrimination, or what consequences it would or would not have, the problem it raises is enforcement.

Many aliens work in what might be called "cash economy jobs". How would we target those jobs in the future when we can't target them at present? When an employer hires someone now to work in his field and pays him in cash, we do nothing about it. We do not enforce the law. Yet, if all the laws presently set forth that would have impact on the employment of

undocumented aliens were adequately enforced starting tomorrow, I submit that we would not need any new penalties on employers. We would not need the model the Commission has presented. As you may be aware, the typical model provides for 1) an administrative citation to be served upon an employer, 2) a civil fine of up to $1,000 per alien to be levied on employers and 3) an injunction in a federal district court in cases where an employer hires undocumented aliens after civil penalties have been applied. You may not be aware that the penalties already prescribed in the law are absolutely draconian compared to the proposed three-tiered civil penalty process.

And upon whom would the civil penalty have an impact? Would it have an impact upon our big multinational corporations that have thousands and tens of thousands of employees? My experience is that the number of undocumented aliens employed by any major corporation is absolutely negligible, as a result of the most rigid internal control mechanisms used by these corporations in screening their employees. Yet, what about the small employers, out of the mainstream of the reported economy, who are the ones that frequently take advantage of and exploit the undocumented alien.

No matter what legislation we enact, though, if we cannot enforce it, we will not benefit from it. If INS has to enforce a penalty provision procedure, I suggest that it would have little practical effect, because of the Service's manpower shortage. INS cannot enforce the laws already set forth. They cannot apprehend undocumented aliens. Further, even if they could, the overall impact of enacting a penalty upon employers would be negligible. An identification card would be imperative, or some sort of documentation would be imperative, if we are going to penalize employers. How else could we, in good conscience, impose this responsibilty upon them?

Like other proposals, this too would be extraordinarily expensive. If, for instance, we were to go back to screen all the persons in the United States and reissue Social Security cards only to those who are here in legal status; if we were to issue a national work identification card; or if we were to do just about anything you could think of in terms of issuing new cards, the administrative burden would be extraordinary. Aside from the infringement on civil liberties, about which you have already heard enough, I wonder how so extraordinary a financial burden could result in effective measures.

On the question of amnesty, I am afraid that the Commission's amnesty proposal, if enacted when Congress finally acts upon the report, wouldn't be very effective. Under the proposal, Congress will determine a residency requirement of at least one year, and possibly more. In the case of Mexicans, this requirement would prohibit approximately 50 percent of those undocumented in the United States from gaining amnesty. What would we do with these people, who would number in the millions? Is it practical to

subject them with enforcement, an alternative that the Commission has recommended? The other alternative, of course, is to leave them in a state of suspended animation, without any legal status.

The proposed legalization program presents the additional practical problem of whether these illegal aliens will trust the system enough to come forth and register to become legalized. I can tell you that this would surely be a problem in the Northeast, where the average undocumented alien has much less respect for the integrity of the law enforcement system, and worries far less about being apprehended. In many cases he leads a fairly normal life, and would consequently be reluctant to upset his *status quo*. Typically, he is a union member, owns his own house and his children go to the local school. He has been here for three or five or eight years, and nothing has happened to him during that time. He is going to figure that he is in good shape, so why should he risk anything at all. His decision not to risk anything is predictable, rooted in distrust of the government and immigration authorities in particular. Given this distrust, which has been greatly underestimated, I would say the proposed plan is not practical. On the other hand, if all the undocumented aliens would come forth, the administrative costs would be incredible. My opinion, though, is that many of the illegals will not come forward to be legalized.

Regarding the immigration selection system that has been proposed, I would like to reiterate some of the thoughts of some of the other speakers. I agree with Dick Scully that allocating 50 percent of visa numbers for spouses and unmarried sons and daughters or residents seems excessive. I would also agree with Peter Schey that one of the curiosities of the proposed system is that it is informed by traditional concepts of immigration, which envision the typical immigrant as a new seed European—the type of immigrant that came to this country in the early 1900s. It seems strange that current trends are not addressed by the report of the Select Commission. Little attention has been given to the fact that the character of immigration has changed very substantially since the early 1900s. Since then, the migration of traditional old guard Europeans has decreased. There has been, instead, a significant increase in the migration of Hispanics in the family preference categories, of affluent immigrants in the preference categories that are based upon the alien having a job offer and of foreign investors.

No reference is made in the report to the substantial influx of affluent immigrants, but I know they are here. I deal with them every day. There are tens of thousands of these immigrants who form a constituency that utilizes a significant percentage of visa numbers in the categories that are not based on new seed immigration (twenty thousand visa numbers are currently allocated within the third and sixth preferences). Just how injurious the effects of the proposed independent immigrant categories would be on this

group depends upon the changes that will be made in the labor certification process that was used prior to 1965 or whether we should streamline the current system.

I submit to you that if we choose a liberalized system, thereby compensating for the inability of persons in Third World countries to qualify under our present system, then we will have new seed immigrants who have no contacts in the United States waiting in the same line for visa numbers as persons who might be executive level personnel of large multinational companies and have dedicated their lives to servicing particular American corporations. Such a system, it is true, would be humanitarian, but at the expense of executive level personnel—and at the expense of our country's business interests. I do not think it is possible to design a category so large, to mix in it executives with U.S. contacts and persons from third world countries with no contacts, and to still have any kind of meaningful policy. Such a heterogeneous grouping could not allow for an appropriate priority or preference to be given to an executive of a multinational company, who does have stronger ties to the United States than a new seed immigrant. In such a system there would be inequity, there would be hardship, and there would be an enormous backlog of visa numbers. I suggest that the proposed structure of this category needs to be refined.

This refinement can only come about when the "new seed immigrant" has been clearly defined. When I worked on the House Judiciary Committee, that committee viewed a new seed immigrant as someone who had neither a job nor a family in the U.S., but who was young, dynamic and motivated to make a new life in the world. We, the members of the Committee, did not consider a senior vice president of Exxon who had worked for the company for twenty years in different places throughout the world to be a new seed immigrant. The distinction still holds true, and should be incorported into our selection system.

Regarding the proposal made for refugees, I would like to say that we need a Regional Commission to deal with economic and political issues affecting the people within this hemisphere. We also need an organization which would represent U.S. interests, coordinate the proposals of various agencies and departments and make recommendations to the Department of State. At the same time we, within the country, must stop dabbling in politics, we must stop earmarking certain groups for refugee treatment while excluding other groups from that same treatment, based on our ideology and our perception of political realities in their native countries. We must observe the law as it is written, and begin to make independent legal judgments on who is a refugee. We have a precise definition; we have only to implement it.

Regarding the treatment of nonimmigrants, I, like Mr. Nahan, was disap-

pointed. The changes that were proposed could have been more extensive, though what was suggested certainly seems reasonable. It is reasonable to waive visas for persons coming to visit the United States from countries that waive visas for Americans. Certainly, such a proposal would lessen the workload of consular officials in these countries. I think, though, that this proposal, if enacted, would increase the workload of immigration inspectors at the port of entry, since it will be extremely difficult for them to distinguish between persons in different categories from the same country. They, in turn, will be more concerned whether individuals such as tourists and business visitors are *bona fide* nonimmigrants.

Consuls will be authorized to issue intracompany transferee (L) visas. Certainly, the recommendation is welcome, and I would also welcome granting the L-1 visa for a period of three years. Further, I submit that to ensure uniformity, a program similar in concept and structure to the J program be adopted.

Intra-company transferees comprise only a percentage of those who come to the United States whose presence benefits our society, and the needs of other nonimmigrants need to be addressed. I would submit that an organization be created within the private sector which would be government funded, whose governments, scholars and researchers, convene and make appropriate recommendations to the Department of State. Further, since the goal of the Commission is to establish a policy in the national interest, the contributions that can be made by stimulating foreign investment in the United States need to be acknowledged. I submit that expanding E-1 and E-2 categories for persons from all countries should be considered. There would be additional beneficial impacts on the sales of U.S. products, on the revenue provided to service industries and on employment.

We as a nation, do want to construct and implement an immigration policy that is in our best interests. Our law, as it stands, does not take into account that many of the nonimmigrants who come to this country for more than four or five years will not want to remain here permanently and do not want to become permanent residents. One of the anomalies of our immigration law is that it forces numbers of people to become permanent residents. We have not made provisions in it for those persons who will live here for some time as intra-company transferees or as persons of distinguished merit and ability and who will be transferred abroad, with the result that we are wasting visa numbers by allocating them to persons who do not really want them. We can remedy this unnecessary allotment by establishing a new category which would be designed for those who will be here no less than four years but not more than ten.

We have, up to this time, not made provisions for those members of the business community who do want to become permanent residents and who

must endure the process of obtaining a labor certification and must often wait to become the approved beneficiary of a preference petition. During this process, which can extend for over a period of a year, the nonimmigrant who has a preference petition pending faces problems of obtaining an extension of his status. And once the petition is approved, he is often forced into a position where he cannot obtain permission to travel even for business reasons.

Neither we nor the Commission have sufficiently analyzed the question of intent or responded to the ensuing problems that arise for the alien who as the beneficiary of the preference petition, is neither a nonimmigrant nor an immigrant. It is imperative that this issue be meaningfully analyzed before legislation is enacted, and that the analysis directly influence the legislation that is passed.

The Commission has addressed a number of administrative problems. The creation of an Immigration Court under Article I of the U.S. Constitution is an excellent proposal, since the series of administrative reviews, now plaguing the present system of review, would be replaced by a system that would provide for a court with two divisions, one to hear and rule upon exclusion and deportation cases and the other, the appellate division, to both correct hearing errors and provide resolutions that will be binding upon exclusion and deportation cases.

In the interim before the court is established, it is imperative that the grade levels of immigration judges and members of the Board of Immigration Appeals (GS-15 for both positions with the exception of the chairman, GS-16) be raised to a level commensurate with the responsibilities of these positions, to enhance their judicial character, which is sorely lacking at the present time. It is equally imperative that both the judges and the members of the Board of Immigration Appeals be disassociated from the Immigration Service. More imperative, though, is that the judicial function of the Service be removed from the direct control of the Immigration Service.

Regarding the proposal of the Commission to initiate professional training for immigration personnel, designed not only to teach them about the ethnic groups and the history of immigration but also to sensitize them to the needs and perspectives of those with whom they have direct contact, I was disappointed. Such a proposal, as carefully prescribed as it is, suggests to me that the radical weakness characterizing the Service was not identified by the Commission. The Service has not assessed the character of its service role to the public, and has not incorporated that assessment into its perception of itself and its definition of how it should relate to the public. Perceiving its role as adversary, its public policy is not to assist persons who need its help.

If any of you has had the occasion to avail yourself of the services of INS

in person you know the scenario. You go up to the counter and ask the clerk in charge for forms required for your application. He begrudgingly throws them at you, without giving further instructions other than to file them back. When you do file the forms, no one calls you in to discuss them or to advise you if they have been completed correctly. When, after some prolonged period of time, someone finally does review them, the forms are scrutinized for anything that is wrong, and either mailed back or denied. When an application is denied because the wrong application was filed the officer neglects to tell you the reason. He just denies it. That is a fairly accurate illustration of the service role of INS.

I must agree that educating personnel, rewarding meritorious service and imposing disciplinary action on personnel who violate the rights of persons - usually aliens, but not always - are good proposals which can only improve the quality of the service, but I view them as cosmetic. They discourage a deeper analysis that raises several questions: Is the service function of the INS designed to be adversary in nature, like the role of the law enforcement division? Is INS a service in name only? Or is it , in fact, a service?

As I started to read the section on arrests, I was pleased. It begins: "Arrests, effected with or without the authority of a warrant, should be supported by probable cause to believe that the person arrested is an alien unlawfully present in the United States". Such a proposal, incorporating into the statute the concept that an immigration officer cannot arrest somebody without founded suspicion that he is in the United States illegally, upholds the liberal view of the courts on this issue.

My pleasure dissipated as I read on, realizing that the Commission, rather than endowing additional rights upon aliens, seeks to take them away. The Commission does not espouse the view currently held by the courts that search warrants are appropriate to search only for things, not people. It proposes the issuance of search warrants to search for people. If this were enacted, the use of search warrants would become the primary law enforcement mechanism of the immigration service in urban areas like New York, and I am sure that immigration officers would be obtaining warrants with little restraint, going to places of employment and other places where they think aliens might be located - the greatest constraint being the interpretation of "probable cause" -and interrogating anyone who doesn't look like an American.

Appearance should not be a factor in determining who is an alien unlawfully present in the United States. In the report there was no mention made of what I consider the most substantial issue in the field of immigration law today: the extent to which appearance, arbitrarily decided upon by an immigration officer, can be used as a basis for probable cause. The Com-

mission avoided this issue, the primary factor informing immigration officers' decisions on which aliens are judged illegals.

The Commission rejected the only mechanism by which immigration officers would be constrained from violating the law, the suppression of evidence rule for unlawfully obtained evidence. In place of this rule, the Commission suggests disciplinary action should be taken against immigration officers who obtain evidence illegally. Taking into account that this disciplinary action would only be taken when the immigration officers prove to have malice of forethought and to have purposely violated the rights of the alien, I suggest that this mechanism of constraint, the imposition of administrative penalties, is worthless. There is nothing that would happen to the officers and nothing that can be done by the alien against whom they illegally obtain evidence. Even worse, this proposal is a rather reactionary provision, in the sense that the law presently provides for suppression of evidence in cases where the violation of the alien's rights is so egregious that it can be considered a denial of due process, as opposed to simply a fourth amendment violation. This particular section, once enacted into law, could create a regression in the state of the law as it presently exists.

Much controversy has centered around the issue of the right to counsel, with respect to defining at what point and time the alien should be advised that he has a right to counsel and that anything he says can be used against him. Originally, immigration regulations provided that he should be advised at the time of arrest. Immigration regulations were then amended, and it was decided that these rights should be given to the alien at the time the determination is made to issue an Order to Show Cause. This decision was subject to criticism, based on the fact that by this time to be advised of one's rights is to no avail; all questionings have taken place.

The Select Commission has addressed this issue in a way that I find astounding: They do not propose that at the time of arrest, or even at the time of Order to Show Cause, the alien should be advised that he has a right to counsel, but that this should occur at the time of deportation or exclusion hearing. Now I ask you, what good is the counsel after all the admissions are made and all the evidence obtained?

I will never understand why the Justice Department gets so upset about the concept of advising aliens that they have a right to counsel and that the statements they make can be used against them. I will even concede reluctantly that this might not have to happen at the point of initial interrogation. However, we have to set some reasonable point in time; it certainly seems that before a formal statement is taken or an alien is asked formal questions that go to the issue of his deportability the alien should be advised of his rights so that he knows what they are, can act accordingly and can have meaningful representation. I will never understand why at that point,

at least, the alien cannot be given his rights.

Finally, I note that international issues are addressed by the Commission both in the beginning and the end. At the beginning we are presented with the question of international cooperation and the need for establishing commissions to ensure awareness of the problems of international migration. International cooperation on immigration issues is absolutely imperative: To have meaningful discussions with our international and regional neighbors on issues like economic development, resettlement of refugees and the protection of refugees is indispensible in solving these problems. The international character of the migration of peoples and the sociological factors influencing these migrations is something that the Commission properly addressed itself to in its opening remarks. I certainly hope that its proposals are implelemented forthwith, and I would observe that legislation is not really necessary to enter into these bilateral or multilateral discussions.

At the end of the report we finish with a very fleeting reference to the treatment of United States territories and possessions. This issue, I would say, received the same inadequate treatment as exclusion and grounds of deportation and the statute of limitations on deportation, and the other murky issues that everyone thought the Commission was empaneled to resolve. On the issue of territories and possessions, we come out with the final observation that there would be legal justification for treating territories and possessions differently from states or the United States as a whole, but the Commission failed to propose a recommendation in accordance with this observation. We are not enlightened by the report on the very profound implications of the status of a possession or a territory. Consider Puerto Rico, whose status, if it were changed, could have a grave impact on our immigration system. If Puerto Rico became independent tomorrow, that would mean that all Puerto Ricans seeking to enter the United States or be reunited with their families would be subject to the immigration selection system, a change which would have an extremely significant impact on our system. Though I feel that the Commission's level of analysis on this issue was rather superficial, the issue is a very thorny one. I hope though that Congress will consider the issue and the ramifications of the U.S. having territories and possessions. Perhaps it may even conclude that the United States should cease to be a colonial power, and either make the territories and possessions states or give them independence.

The Proposed Immigration Model: A Response from Interested Groups

Roger Conner*
and Lindsey Grant**

On October 5, 1978, President Carter signed into law a bill creating a Select Commission on Immigration and Refugee policy. The charge began thus:

> conduct a study and analysis of the effect of the provisions of the Immigration and Naturalization Act (INA) on (A) social, economic and political conditions in the United States; (B) demographic trends; (C) present and projected unemployment in the United States; and (D) the conduct of foreign policy ...

The Commission rendered its final report to congress on March 1, 1981. Three important conclusions emerge from a close reading of the Report, the Executive Summary and Father Hesburgh's Introduction: 1) immigration to this country is "out of control"; 2) "what is a serious problem today could become a monumental crisis as migration pressures increase"; and 3) the American people are frustrated and angry, ready to demand radical measures unless their government responds. I have been asked to give FAIR's evaluation of how well the Commission responded to the challenge those conclusions represent.

First, any Commission created to make findings and recommendations on immigration policy has been handed a difficult task indeed. People have strong visceral reactions, one way or the other. Beyond emotions, there are the interest groups: employers who need illegals to survive; welfare groups whose very existence depends on a continuous flow of refugees; unions; population groups; and an endless list beyond (in which we must also include FAIR).

* Executive Director, Federation for American Immigration Reform (FAIR).

** Former Deputy Under Secretary of State and Senior Advisor, FAIR.

Further, there are broader and more fundamental issues of national interest. How much does immigration exacerbate the present unemployment problem, particularly among the poor and the young? What will it do over time to the balance between population and resources in the United States? What effect will it have on the availability of farmland, the production of food for us and for export? There are plenty of theories about these impacts, coupled with a shortage of hard evidence. The report of any commission, in such a morass, would be contentious.

Perhaps the very diversity of the Commission complicated any hope of a detailed response to these important questions. What the Commission report does is three things. First, it conducts a detailed study of existing law and comes to the conclusion that most of that law should be left intact. Second, it proposes to remove the lure of jobs by making it effectively illegal to hire illegal immigrants, along with increased law enforcement. Finally, it calls for substantial increases in legal immigration along with a broad amnesty for illegal immigrants already in the country.

Although the policy recommendations are laced with cryptic comments on the larger question to which I referred a moment ago, the recommendations themselves are far more detailed than the substantive analysis of their social and economic implications.

In the Commission's words, its proposals would "close the back door" while they "open the front door a little more...". FAIR's reaction is that a better case exists for reducing than for increasing immigration. We applaud the proposals to "close the back door" but are concerned about their prospects for being put into practice; we oppose tinkering with the "front door" until we see whether the back door has really been closed and until we have a better idea as to how many are in the house, and how many more are coming.

Enforcement

The Commission recommended that "the law be firmly and consistently enforced against U.S. citizens who aid aliens who do not have valid visas to enter the country".

FAIR finds this statement more meaningful than it may first appear. It is an oblique criticism of the Carter administration's vacillation as to whether to enforce the law, which contributed to the Cuban influx of 1980. Certainly, a clear statement of the government's intention to enforce the law, impose fines and seize vehicles and vessels used in importing illegal aliens is a first step to discourage the casual flouting of the law.

The Commission also urged that the Immigration and Naturalization Service (INS) be beefed up and improved. FAIR agrees with the sentiment but

wishes that the recommendation had been more forceful and more detailed. A year ago, the *New York Times* characterized U.S. immigration policy as a "wink" at illegal immigration. We have laws, but starve the enforcement agencies so that the laws will not be enforceable. The Border Patrol is spread unbelievably thin. It attempts to monitor some 6000 miles of land frontier with some 350 officers on patrol at any given time. Now, the new administration, pursuing its budgetary goals, has proposed to Congress that INS absorb 44 percent of the Department of Justice's forthcoming budget cut. If the intent is to insure the vitiation of U.S. immigration law, we are well on the way.

To begin the process of saying more precisely what is needed, let us offer the following estimates. Last year, at FAIR's suggestion, the Border Patrol Supervisors Association surveyed the individual sector chiefs and came up with the estimate that the Patrol could apprehend about 90 percent of illegal border crossers, instead of the present approximate 33 to 55 percent, if its total manpower were somewhat more than doubled, to 5500, and its budget were increased by $122 million. This is at least an informed guess as to how much it would cost to deal with part of the problem. It is not an overall total. The Coast Guard should be asked what it needs to maintain its sea patrol. We also need improved control of nonimmigrants and better internal surveillance to apprehend illegal immigrants who have gotten past the border area, and INS itself desperately needs a thorough administrative overhaul.

It is not presently very popular to argue against any budget cuts, but let me warn that some cuts can be directly destructive to the budget itself. Aside from all the social costs of illegal immigration, let me cite one budgetary figure: The Congressional Budget Office has recently computed the budgetary cost in direct transfer payments for every unemployed worker at $7000 to $9000 per year. If one million workers are displaced by illegal immigrants, that is 7 to 9 billion dollars; and one million is an extremely low guess as to the total current displacement of American workers by illegals.

Fair Hiring (nee Employer Sanctions)

The Commission also recommended that it be made illegal for employers to hire "undocumented workers" (*i.e.*, illegal aliens and nonimmigrants not permitted to work in the U.S.). It also recommended "some system of more secure identification" to determine who is eligible to work.

FAIR strongly endorses both recommendations. Every serious student of this issue agrees that there is no way to stop illegal immigration unless you remove the access of illegal immigrants to employment. The "Texas proviso" must be repealed, so that employers are legally prohibited from hiring

illegal immigrants. Heretofore such proposals have died in the withering cross-fire of ethnic groups who fear discrimination from employers who cannot tell their status, employers who fear unfair prosecution if they unwittingly hire an illegal and civil libertarians who fear that any form of worker identification will create unstoppable momentum toward a police state.

These interests were more than amply represented on the Commission, which makes the Solomon-like resolution of the issue in the Report all the more remarkable: A worker identification system of some kind, perhaps functioning like the ubiquitous call-in system used by American Express and Visa, contains fewer hazards than the alternative of continuing illegal immigration.

That this particular Commission, given its make-up, could reach such a conclusion suggests that a shift in informed opinion of rather dramatic proportions has occurred among opinion leaders in the past five years or so. The response in the press confirms my hunch: The *Washington Post* editorial writers reluctantly observed that some kind of identification seemed inevitable, and the *New York Times* editorial called worker identification "The Missing Nail".

We are glad to report that a start has been made with the introduction of the Immigration and National Security Act of 1981 by Senator Walter D. Huddleston and seven others in the Senate (S.776) and by Representatives Robin Beard (R-Tenn) and Tony Coelho (D-Ca) in the House (H.R.2782).

The Commission also made some potentially helpful recommendations to improve the judicial review process and control the endless litigation by aliens threatened with deportation, which I will not try to cover here.

LEGAL IMMIGRATION

Immigration Quotas

The Commission's public statement is that it recommended "a total limited immigration number of 350,000 per year", plus 100,000 per year for five years "to reduce backlogs".

FAIR finds this statement thoroughly misleading. There is in fact no overall "total" at all; the Commission decided not to set one. The 450,000 (for the first five years) includes only those classes of immigrants subject to numerical limitation. As to these, the Commission proposal constitutes a 66 percent increase over the present law for the next five years. Refugees, ministers, and certain family members of American citizens would enter above these quotas. In 1980, immigration totalled over 808,000, not counting illegal immigrants. Had the Commission's recommendation been in effect that year, legal immigration would have exceeded 980,000, and this

figure does not include the millions who will be admitted later as immediate relatives of newly naturalized citizens.

FAIR and others (including one Commission member) have proposed that a ceiling on total immigration should be set in light of the nation's absorptive capacity, so that any future increases in one category would be balanced by decreases in another. Only in that way will the government be forced to balance priorities rather than yielding to one pressure group after another.

We observed earlier that the American public is impatient with what it perceives as a failure of their political leaders on immigration, and recent public opinion polls back up this point. A Roper Poll on June 18, 1980 asked whether 400,000 legal immigrants a year would be too many. Eighty percent said yes. A Gallup Poll reported in *Newsweek* May 26, 1980 found 65 percent in agreement with the statement that all immigration should be halted until unemployment drops below 5 percent.

These findings are subject to the usual criticisms of public opinion polls. However, since the Commission staff itself rejected the idea of conducting a careful study of public opinion, the existing polls are all the information we have. As such, the conclusion is inescapable that the Commission simply ignored the overwhelming desire of the American people that legal immigration should be reduced rather than expanded.

This is all the more remarkable when one considers the cursory analysis within the document of the substantive arguments for increasing or decreasing immigration. The Commission concedes that hard evidence is lacking on which one could reject out of hand the conclusion reached by the American people. In essence, the Commission says that the American people are wrong, but does not feel compelled to present a convincing case as to why.

FAIR believes that the Commission moved in the wrong direction on numbers. The proposal in the Immigration and National Security Act mentioned earlier—350,000— is far more realistic. I shall not repeat in this context the rationale for a lower level which we have developed elsewhere. Suffice it to say that a time of high unemployment, energy uncertainty and growing public resentment of immigration is hardly the time to propose an increase in the numbers.

Immigration Preferences

The Commission reviewed the current preference system exhaustively and wound up endorsing most of it. It recommended a separate quota for "independent" immigrants, and assigned most of the proposed increase in quota numbers to it. Perhaps the most important decision was a negative

one: to keep the present preference for brothers and sisters of American citizens. The staff had recommended its abolition. Another loophole in the ceiling is created by exempting adult unmarried children and grandparents of Americans from numerical limitation.

FAIR believes that priority should be given to immediate nuclear family members of American citizens and legal immigrants, but not to brothers and sisters. The "fifth preference" given to brothers and sisters in the present law is the key to "immigration chains" which multiply the number of actual immigrants for each quota immigrant admitted. An immigrant is naturalized and brings his siblings in under that preference; they in turn bring in their spouses under second preference, who in time are naturalized and bring in their parents and siblings. And so on. "Family unification" is an appealing slogan, but the admission of married siblings of American citizens actually tears apart the family of the spouse, and the very process of migration must mean separation from somebody.

Refugees and Mass Asylum

The Commission decided to endorse the Refugee Act of 1980 and the way it has been administered. A minority opposed such a sweeping endorsement and pressed particularly for reform in the present provisions which give the president unlimited authority to bring in refugees after mere consultation with the appropriate congressional committees. The minority wanted closer congressional surveillance and a new look at the definitions and standards used.

On mass arrival of asylum claimants (such as the Cuban influx last spring), the staff concluded that such influxes will occur again. It focused on measures to accommodate such movements, not on measures to prevent them. The Commission called for an interagency coordinating system, contingency planning for handling such movements, planning for processing centers and various proposals to help evaluate and adjudicate asylum claims. It did not offer any guidance as to how to deport illegal entrants when (as in the case of Cuba) their home countries will not take them back.

FAIR believes (as did at least one of the Commissioners) that the Commission here approached some of the really critical issues and backed away. Congress in 1980 raised the annual refugee figure from 17,400 to 50,000. Within the month, using an escape clause in the law, the president decided to bring in 232,000 refugees. He later regularized another 125,000 Cuban and 24,000 Haitian illegal entrants as "special entrants". For FY 1981, with a cursory explanation to congress, the government set a target of 217,000. The Commission is simply abdicating its responsibility when it fails to address the impact of such a breathtaking acceleration of refugee intake or to take on the questions of how to forestall or deal with the new phenomenon

of mass, covert, illegal influxes into the U.S.

FAIR does not oppose a 50,000 quota for refugees, and it believes that the president should have the authority to raise that total in emergency situations, but only within the total immigration ceiling by reducing other categories.

FAIR believes that congress should not delegate its authority over immigration level to the president and believes that positive expression of congress's will should be a requirement for any raising of the annual refugee and immigration quotas it sets.

Amnesty

The Commission proposed "legalization of undocumented aliens" in the United States as of January 1, 1980. It said that such an amnesty should only follow the development of effective controls on illegal immigration, but it left the details to congress.

FAIR believes the proposal is premature. The Commission proposes to legalize a class without even a rough idea of the numbers or costs involved. Directly, this proposal would add millions to the permanent U.S. population (the Commission's own very conservative figures suggest a range of 1.5 to 3.6 million). Moreover, it would permit additional millions of family members to enter as non-quota immigrants once the illegal aliens are legalized and can obtain citizenship. Unless future illegal immigration is under control—and the Commissions' recommendations hardly assure such control—the process will generate further illegal immigration. . .and future amnesties. One of my associates has already been asked, in behalf of an Iranian ex-student, how deportation can be stayed until the amnesty comes into force.

We believe that amnesty can only be the last step, after the dimensions of the problem are known, after effective immigration controls are in place and when case-by-case criteria have been established to decide when illegal aliens should be offered amnesty.

WHAT NEXT

The Heritage Foundation, one of Washington's new conservative "think tanks", published a book entitled *Mandate for Leadership* just after the election. It is an agency-by-agency, issue-by-issue description of what the Reagan Administration should do. When they reach immigration, the otherwise self-confident authors pause: "There is no clear 'conservative' position on immigration, and no clear 'conservative' solution". So, it is not surprising that President Reagan's first act on immigration policy was precisely what Presidents Ford and Carter had done before him: He appointed a committee to study the issue.

However, rather than reporting at the end of his administration (as in Ford's Domestic Policy Council), or two years into his term (as in Carter's Interagency Task Force), the Committee was to report back in three months. This change of pace illustrates the best single thing about the Commission's work: It is over.

I do not mean this in any pejorative sense. It is just that the most creative minds in congress and the administration will be hard pressed to come up with another mechanism by which this cup may pass from them. The studying has been done. The hoped for "conflict free" solution has not been found. The situation is deteriorating rather than improving. And there is nothing on the horizon to suggest that we will know more about "solutions" in two years or four than we do now (though I hope our friends in the research establishments and universities will continue their work). At this stage, calls for more study prior to congressional action would be a pretense for inaction.

While we do not know the entire answer, we do know where to start. And a handful of members of congress, led by Senator Walter D. Huddleston of Kentucky, have introduced The Immigration and National Security Act (INS Act) of 1981 (S. 776, H.R. 2782). They will doubtless be subject to endless criticism, as it is always easier to tilt at windmills than it is to build new ones. However, the bill will serve as an outline for the emerging congressional debate to "close the back door", as it includes a combination of Fair Hiring procedures, worker identification and increased enforcement. And it is designed to return the "front door" to a semblance of rationality and order by setting an all-inclusive ceiling on total immigration into the country of 350,000. This is not to say that more could not be admitted in future years, but that a future president would have to persuade the congress to increase the level rather than adding hundreds of thousands to our population by the stroke of a pen.

As congress evaluates this legislation and the other proposals which will emerge from the Commission's work, we hope that it will have in mind the penetrating analysis contained in the extended remarks of Senator Alan K. Simpson [R.-Wyo]:

> Should the United States immigration and refugee policy be evaluated by the national interest standard of what best promotes the welfare of the majority of Americans and their descendants? Or by the humanitarian standard of what best promotes the welfare of those persons living abroad who are less fortunate than most American citizens. . .(or of) a relatively few individuals living in America who wish to bring to this country relatives living abroad?

What is at stake in this debate is nothing less than the quality of life which our children will enjoy. It will accomplish little if we sacrifice their future for unlimited immigration today, for as the Commission so rightly concluded we cannot solve the world's overpopulation, underdevelopment and refugee problems through migration. Paradoxically, the long range interests of people in the source countries would be better served by the adoption of the INS Act than by the *status quo*. For migration to the U.S. frequently consists of the most ambitious, the trained people from the sending countries. And, to the extent that elites in source countries consider migration an "escape valve", either for their troubled masses or themselves, it can only reduce pressures for needed social and economic reforms which address the fundamental problems which they face.

Every decade an issue emerges to test the very basic ideals of our country. The Vietnam War, the environment, civil rights were such issues. Immigration may well be the issue through which we redefine ourselves as a people in the age of limits. In a sense, the Commission report is a signal that this debate, now long overdue, is about to commence. May the best ideas win.

The Proposed Immigration Model: A Response from Civil Libertarians

DAVID CARLINER*

There are two different approaches one could take on the subject of the proposed immigration model. One is the rather macro approach which Mr. Conner has touched upon as to whether an immigration model has been proposed for solving the flow of people to the United States. The other is a micro approach looking at the specific proposals made by the Commission for the reform of immigration laws. Insofar as I am representing the American Bar Association, I limit my remarks to the micro approach. Even there I do not have the authority to speak for the American Bar Association on all of the Commission's proposals, since the ABA has taken positions only on some issues.

On the macro approach, the American Bar Association sticks rather closely to its cloth and does not have any proposed solutions to the large scale problems. However, as an individual who is concerned with the major and the minor issues here, I would like to take a moment to address the larger approach, one which will touch to some extent on Mr. Conner's presentation to you. He and I agree on one issue. The Select Commission has not proposed any long range solution to the problem. I will go further, though, than Mr. Conner. I do not think the United States Congress will suggest any long range solution, either. What can be fairly said, if one looks at American history, is that there is no way of putting controls on the number of people coming into the United States. There may be limitations placed, but the movements of people from one part of the world to another, from one piece of earth to another, is so profound and so fundamental that they are difficult to control. I use the word "control" deliberately because it is a word that has been used here earlier as if one can draw a line on a border and say one cannot cross over, or as if one can say, as the United States has said in recent years, there shall be a finite number of people who can come to this country and no more, as if one can say that we know with certainty what the finite number should be.

* Chairman of the Immigration Committee of the American Bar Association.

The Zero Population Growth movement believes that we should have no more than the number of people that we now have in the United States and organizations such as the Federation of American Immigration Reform (FAIR) believe that we should have no more aliens, for the most part, coming into the country. The evidence is not all in on that subject. There are too many factors, not limited to laws, which determine the rate of population growth and which determine the economic capacity of one piece of earth to support a number of people. Merely because we say that no more than 20,000 people shall come in from Mexico a year cannot define the number of people who will flow in across a border 2,000 miles long, where for political, geographical and physical reasons, among other reasons, we will never build a Berlin wall. There is also a question whether we would or could have a flotilla of ships protecting our coast to prevent what was a very distasteful and humiliating situation for Americans, when Cuba dumped X number of thousands of people into the United States. We could behave the way some of the Southeast Asian countries did with the boat people from Vietnam. Yet given the kind of people we are in the United States, given the nature of our country, it is not likely that we are going to do that.

We have had, through all of our history, a debate as to the number and kind of people that should come here. As early as 1797 a leading figure in American political life said that the country was overcrowded. If we are going to decide this question based on a majority vote, never in our history has the majority of the people favored letting in aliens without restrictions.

There are some kinds of issues which are decided, perhaps, on the basis of what religious people among us would say are moral absolutes. Should we, if we had it to do over again, behave the way we did in the 1930s and early 1940s to the Jews who became victims of nazism? Should we behave in recent years to Vietnamese, to Cubans, to Haitians in a way which excludes them? If this decision is to be made by the majority vote of the people of Arkansas or Florida or of the entire country, we would take no more refugees into the United States except perhaps in certain moments of crisis when the compassion of the people is aroused. No matter what one's political or social views may be, they are not easily susceptible to an absolute formula for drawing lines and defining numbers. It is for that reason that I believe that neither will congress be able to provide a solution.

I say this also for perhaps a more cynical reason. We know that the Select Commission came about because of a political dilemma in congress. Early in his administration, President Carter sent to congress a three-pronged package to solve the problem of the number of aliens illegally in the United States. Because of the public concern over the issue, that package provided for employer sanctions, for a method of identifying aliens who are illegally in the United States and for granting amnesty to those who were then in the

United States. Congress did not buy that package. As Mr. Conner has suggested, if congress cannot solve a problem, it appoints a commission to dispose of it. It was a political decision, made for that very reason, to establish the Select Commission. We now have its report and it has come back to congress with the same basic proposals. The question is whether it is more saleable in this congress than it was several congresses ago. We each can answer that question for ourselves.

With regard to the specifics of the Select Commission, the recommendation that deals with the legal issues of concern to the American Bar Association is the proposal to establish an immigration court. This is called an Article I Court, which is a legislative court established by an act of congress. The difference between an Article I Court and an Article III Court is that in the latter, that is, the United States District Courts, the Courts of Appeals and the Supreme Court, the judges are appointed for life. Their tenure and jurisdiction are fixed in the Constitution. These are so-called constitutional courts. Article I Courts are so-called legislative courts and have been established to review cases involving patents, customs determinations, taxes and bankruptcy.

The Commission has proposed to set up a similar type of court for immigration and naturalization matters involving the deportation and/or the exclusion of aliens and the procedures for adjusting their status in the United States to that of permanent residents. This proposal has been made, I think it is correct to say, as a way of having one final decision by a judicial body, made quickly, without allowing numerous appeals.

At the present time an alien who is subject to deportation from the United States is entitled first to have a hearing if he or she wishes. The hearing is before an immigration judge, chosen by the Immigration and Naturalization Service, who determines whether the alien is deportable and whether there is any discretionary relief enabling the person to avoid deportation either by leaving the country voluntarily, or in circumstances where the alien is eligible, to apply to become a permanent resident of the United States. If the alien or the Immigration and Naturalization Service is dissatisfied with the decision, an appeal can be taken to the Board of Immigration Appeals, an agency within the Department of Justice. If the alien is dissatisfied, the decision can be reviewed, in most circumstances, in a United States Circuit Court of Appeals. There are eleven such courts in the United States. Some cases can be brought to a United States District Court for review and an appeal can be taken of its decision to the Court of Appeals, and from the Court of Appeals one has the very theoretical right to petition to the United States Supreme Court for review—theoretical because 99 percent of the cases are refused.

The proposal for the Immigration Court has been made to eliminate the multiple appeals to speed up the process. That is an argument in favor of it. Opponents say that an Article I Court is a rather elaborate structure; it means having a judge who is appointed for a certain period of time with the formality and additional personnel of a court to decide cases which, for the most part, do not require a person of that stature and that type of court to make decisions. Of the 60,000 cases handled by immigration judges in the course of a year, more than 90 percent are cases which take no more than 10 to 15 minutes. These involve people who have crossed the border when no one was looking, or who have entered the United States on visitor's visas and have overstayed their permission to remain. There is usually no factual issue in dispute. Most people in these hearings admit that they are deportable from the United States. The relief granted by the judge in these circumstances is usually to permit the alien to leave voluntarily because it is to the alien's benefit to do so. It is also to the United States government's benefit, as the alien is not deported at the taxpayers' expense. The question is raised why is it necessary to have the elaborate structure of an Immigration Court to handle so many cases that need so little judicial time. In days of trying to economize on governmental activities, I believe that the United States Congress, the Judiciary Committees especially, may not care to establish a judicial entity with so much structure and so little function.

In any event, the American Bar Association's Committee which is concerned with this issue is divided in its opinion and has not yet come to a conclusion as to its recommendations. I am merely giving several points of view.

There is also a proposal which is desirable for administrative efficiency to simplify naturalization requirements. To become a citizen of the United States, an alien must have a preliminary examination before the Immigration and Naturalization Service. In 99 percent of the cases, an INS examiner, who functions in this capacity also as an officer of the court, makes a recommendation to the court. When the recommendation is favorable, there is no further hearing in the court, but only a ceremony for naturalization. In the few cases where the recommendation is forwarded to the court with so-called "facts to the court" in which there are adverse factors, but not so adverse that the Immigration Service believes that the applicant is ineligible for naturalization, a court will conduct an independent hearing if a judge believes that the facts are such that they should be developed further. Then there are other cases when the Immigration and Naturalization Service recommends that a person not be naturalized because the applicant has not proven that he or she is of good moral character or does not meet other requirements to become a naturalized citizen. Those constitute a very small percentage of the cases which go to the court. In this situation the recom-

mendations of the Immigration Service usually are unassailable and the aliens choose to withdraw their petitions for naturalization and wait until some time when they might meet the qualifications. Because so much time is spent in a court for so little judicial activity, the Select Commission has recommended that the procedures for naturalization be handled administratively by the Immigration and Naturalization Service, except in those cases where there is a contest or when the Service believes there should be judicial naturalization. These would go to the court. One of the problems legally and constitutionally that may affect this issue are decisions by the United States Supreme Court that have defined naturalization proceedings to be "cases" which are decided by a court. If there is a belief that these are so judicial that they have to be decided by a court, it may be that this would be a reason for not adopting this proposal. I believe, however, that this question can be resolved.

There are other proposals of a legal nature. One has to do with the present procedures under the immigration laws for a person who has come into the United States as a visitor, or who has come in illegally but has been inspected and admitted into the United States by an immigration officer, for anyone other than someone who sneaked across the border and was not inspected, or someone who falsely claimed that he or she was a United States citizen and therefore was not inspected. If aliens who have been admitted to the United States marry U.S. citizens or permanent residents, or have other relatives who are U.S. citizens or permanent residents who can sponsor them or qualify to become permanent residents because they are eligible for employment in the United States in shortage occupations, they are able to adjust their status within the United States without having to go back to the countries of origin in order to get an immigrant visa with which to return to the United States as a permanent resident. This is an administrative procedure that has developed over the last thirty years or so. It has been very convenient both for the Immigration Service and the State Department as well as for the alien concerned. The procedure eliminates the need for a consul abroad to review an application for a visa for someone who has been living in the United States and whose status can be adjusted within the United States. It has been convenient for the Immigration Service because to require a person to go out of the United States and return results in another inspection by the Service.

It has been argued, however, that allowing people who have come here as visitors to adjust their status in the United States without making them go home again, encourages them to come here illegally with the intention of staying in this country. Because it encourages illegal immigration, it is said that a disincentive should be adopted.

However, on the other side, there are *bona fide* visitors who, after they

come to the United States, marry U.S. citizens for *bona fide* reasons of marriage and not for fraud or are employed in shortage occupations. The question is posed why they should be required to make a return trip home and back again before becoming permanent residents if they are needed in the United States to work in shortage occupations or if they are members of families which could obtain preferential treatment under the immigration quotas.

There are various other issues in the Report which were not resolved. One proposal was to revise the present grounds of exclusion under the immigration laws. There are some 33 paragraphs which define the kinds of aliens who are not eligible to become permanent residents in the United States. Within those 33 paragraphs, there are many subclauses. Some years ago it was estimated that there were some 700 grounds under which aliens could be excluded from the United States. The grounds include being a sexual deviate, not precisely defined. There is controvesy as to what is "deviant". Homosexual conduct, for example, is said by the gay groups not to be. Various kinds of sexual practices between heterosexuals are sometimes defined as "sodomy". Because laws regarding sexual behavior, at least between consenting adults, intrude on the privacy of interpersonal relationships and are largely unenforceable, there is considerable opinion that this particular clause in the Immigration Act should be repealed.

There are also very elaborate provisions in the Immigration law which keep out people who believe in communism in any of its multivaried forms, including anyone who has ever attended a communist meeting or given any financial contribution to communist organizations. The definition as to what is a communist organization includes so-called "communist fronts". These provisions were written into the law at various times. One against anarchists was enacted 1903; communists were covered by laws enacted in 1917 and 1918. They were revised, refined and greatly expanded in 1950 in the Internal Security Act. However, they have become largely meaningless for deporting aliens from the United States. The Supreme Court in a number of interesting decisions has made it almost impossible for the Immigration Service to deport a person who is said to be a communist. The State Department has more effective control in barring aliens said to be communists because consular officers abroad can deny visas to persons who they believe are excludable upon political grounds. There is no judicial review for these denials. Whatever the finding by the State Department, it is final. For the most part, visitors to the United States are granted nonimmigrant visas by obtaining waivers of their ground of excludability by the State Department and the Department of Justice. It is the person who seeks to come to the United States permanently who has the barrier.

This has a rather poignant effect on more families than the American peo-

ple know or may care about. There are Americans who have gone abroad and married spouses who have been or continue to be communists. Unless they show that they have defected from the communist movement and have actively opposed its doctrines for a period of five years, or that they joined involuntarily, they cannot obtain visas to emigrate to the United States. There was a proposal to delete this ground, but the message came rather clearly from those members of the Commission who are elected to office, the members of the House of Representatives and Senators. One of them said this is not the time to send out a message to the American people that we are going to let into the United States "sexual deviates, communists and psychopaths". One can understand that voters may resist voting for a candidate who wishes to let into this country "sexual deviates, communists and psychopaths". As a result, the Select Commission was quite sensitive to the needs of its political members, and deferred the matter to Congress itself to decide. There were those who felt, including one lame duck congressperson who took the initiative on this issue, that the Select Commission should have been a sounding board for arousing the consciousness of people in the United States, as to what they believed is the absurdity and the unneccesary restrictive quality of these exclusionary grounds.

In any event, these are matters which I must emphasize are micro in nature. They don't bear at all on whether we should admit 350,000 people to the United States or ten million. Issues on the micro level are susceptible to Congressional determination and there will be laws written. There was one member of that Commission who said "I like the law the way it was written". But there are those in Congress who believe that there should be changes. How great they will be will depend upon audiences like this and what waves you create out in America.

The Proposed Immigration Model: A Response from the Mexican American Legal Defense and Educational Fund

ANTONIA HERNANDEZ, ESQ.*

The Mexican American Legal Defense and Educational Fund (MALDEF) has followed the work of the Select Commission since the time of its inception. We are a nonprofit legal organization working to protect the civil rights of Hispanics in the United States. U.S. immigration policy, particularly with regard to Mexico, affects the entire Hispanic community in this country—U.S. citizens, permanent resident aliens and undocumented immigrants living within our boundaries. For this reason, MALDEF is extremely concerned about the future direction of U.S. immigration policy. We want to ensure that enforcement of immigration laws will not infringe on the rights of these individuals.

GENERAL STATEMENT ON THE WORK OF SCIRP

When the Select Commission on Immigration and Refugee Policy (SCIRP) was created by congress in 1978, it was directed to perform a task which was greatly needed and long overdue. Since the last revision of the Immigration and Nationality Act in 1965, immigration needs have changed significantly. The capacity of the 1965 Act to address current needs has been called into question. Moreover, the issue of immigration has recently come to the public forefront. There have been many misconceptions about the impact of immigrants on the American economy.

It was the mandate of the Select Commission to collect and study empirical data, separate the truths from the myths and develop recommendations for future United States immigration policy. Our evaluation of the Commission's Final Report, presented to congress on March 1, 1981, is that it represents a good start in that process. However, we feel that the federal report fell short of the total congressional mandate.

Although the Commission made many concrete recommendations to im-

* Associate Counsel, Mexican American Legal Defense and Educational Fund, Washington, D.C.

prove the efficiency of our immigration policy, other recommendations addressed issues only superficially or failed to dispel certain myths. For example, the Commission's recommendations to increase budgetary outlays for border enforcement personnel and equipment seems to be based on the false premise that Mexican immigrants make up a majority of what is cited as "the immigration problem". But, the Bureau of the Census estimates that less than half of the undocumented population comes from Mexico. Nevertheless, a substantial portion of the enforcement budget is geared towards the protection of the Mexican border. We find it difficult to reconcile that the Commission directed special attention towards Mexico in the area of enforcement but did not give sufficient attention to its admission policy.

International Issues

In Section I of its Final Report the Select Commission concluded that immigration is not merely a domestic issue, but a global issue as well. It emphasized the need for the United States to work with other nations and international organizations to develop a better understanding of migration issues. We recognize this need and agree with the Commission's recommendations regarding international migration in general.

It is our opinion, however, that the Commission failed to adequately consider the unique migratory relationships between the U.S. and its contiguous neighbors. Although the Commission advocates the expansion of bilaterial consultation with Mexico and other neighboring countries, certain recommendations make us skeptical as to whether the Commission followed its own advice. The Commission should have held more consultations with its contiguous neighbors before recommending immigration policies with respect to them. Given our close geographic, economic and historic ties to countries within this continent, the U.S. should institute higher admission ceilings, as well as proposals to expand and facilitate movement of nonimmigrants across the Canadian and Mexican borders. We are disappointed by the Commission's failure to adequately consider these special factors, and feel that this shortsighted view will make it difficult, if not impossible, to fulfill some of the Commission's other goals.

ADMISSION OF IMMIGRANTS

We agree with the Commission's statement that family reunification should be the primary consideration in developing immigrant admission policy. But, we do not believe that the Commission's recommendations in this area will realistically fulfill the goal. We have several concerns.

Our first concern centers around the Select Commission's inconsistency in its definition of immediate family. For U.S. citizens this term includes spouses, unmarried children, parents and grandparents. For permanent resi-

dent aliens, however, it is limited to spouses and unmarried minor children.

Nuclear familial ties are just as strong for permanent resident aliens as they are for U.S. citizens. Nevertheless, the Commission recommends a far more restrictive admissions policy for families of permanent resident aliens. Although spouses and unmarried minor children of permanent resident aliens would be exempt from per country ceilings, their admission would be limited to a certain percentage of the worldwide admission ceiling. Parents of permanent resident aliens, if they are over 60 years of age and have no children living outside the United States, would be placed at the bottom of a preference system, subject to both worldwide and per country limitations. Moreover, parents not meeting these criteria, would be excluded altogether from the proposed family reunification category. The same is true for all grandparents of permanent resident aliens. In short, any and all relatives of permanent resident aliens would be subject to numerical constraints.

We do not believe that permanent resident aliens should be treated differently from U.S. citizens. Many immigrants have legally resided in the U.S. for many years, leading productive lives and contributing to our society. Moreover, many immigrants have served this country in times of war. With the exception of the right to vote, the U.S. Constitution grants these individuals the same rights granted to U.S. citizens. Therefore, these people deserve equal opportunity to be reunited with their families. The Commission's proposal, unfortunately, bars this opportunity.

Our second concern is that per country ceilings make fulfillment of the family reunification goal unrealistic, particularly with respect to Mexican immigrants. The Select Commission did not recommend an increased annual immigrant ceiling to Mexico, but instead chose to treat Mexico as any other country. It seems the Commission failed to consider that, due to geographic proximity, relatives of U.S. citizens and permanent resident aliens are more likely to be residing in Mexico than in any other country. The U.S.-Mexico border, as we know it today, did not exist until the early part of this century. This fact, coupled with the reality that great numbers of Mexican workers were imported to the U.S. during the *Bracero* program, has resulted in many families being separated by the U.S.-Mexico border. The imposition of a standard per country ceiling would present a disproportionate hardship on Mexican families. We believe that this is unfair and fails to take into account this country's special relationship with Mexico.

LEGALIZATION

Another goal set by the Select Commission which we feel would be difficult to accomplish by the recommended means is legalization of the status of undocumented persons already in the United States. We agree with the Commission's basic premise that all those undocumented aliens who have resid-

ed in the U.S. since January 1, 1981 should be permitted to legalize their status. At the same time, we are concerned with both the Commission's failure to provide a definition for the term continuous residence and its recommendation for the deportation of ineligible aliens. The nebulous nature of the Commission's proposal could deter eligible aliens from coming forward, while making those ineligible aliens who come forward subject to deportation. This in itself will drastically reduce the effectiveness of such a program and thus defeat its purpose.

If the program is to work, there must be a strong effort on the part of officials to inform the undocumented population of the precise requirements for eligibility and of the possible ramifications. Congress will have to follow up on the Commission's recommendation and develop a workable model for implementation. It must establish a reasonable cut-off date, define exclusionary criteria and propose alternatives for dealing with ineligible immigrants which are more humane than the Commission's proposal of deportation.

INS ADMINISTRATION

MALDEF agrees with most of the Commission's recommendations regarding the structure and administration of the Immigration and Naturalization Service, although we feel that some of the recommendations did not go far enough and that a few are unwise.

The recommendation to upgrade the position of INS commissioner to director, similar to other agency heads, shows that the Commission acknowledges the importance and interrelationship of immigration policy in total U.S. policy. Making the director directly accountable to the attorney general will improve communications and thus ensure higher levels of attention to immigration matters.

We also agree with the Commission's findings of inadequacies in the present adjudication of immigration hearings and appeals and with its recommendation to amend existing law to create a new Article I court. The inadequacies of the present system are exemplified by court delays in decision-making, poor quality and judicial scholarship of many immigration judges, bureaucratic nexus between judges/Board of Immigration Appeals and INS /Department of Justice and dependence of judges on the Service for logistical support. In order to allow immigration judges to preside in a truly adversary mode of adjudication, it is necessary for them to be totally independent from the INS.

The Commission recommends that all major domestic immigration and nationality operations be retained within the INS, with a clear organizational and budgetary separation of service and enforcement functions. We agree. However, another recommendation reveals that the Commission encourages the retention of an enforcement-oriented INS. I refer here to the

proposal to increase Border Patrol funding for more personnel, helicopters, light planes, sensor equipment and night viewing devices. Not only will this approach turn our southern border into a militarized zone, but it will perpetuate the anti-alien hysteria which has been generated by some exaggerated reports of "hordes of aliens" entering the country from Mexico. It would also be counterproductive to efforts to reduce INS abuse of aliens which the Commission recommends. Thus, we believe that there should be a more equal distribution of funds between the functions of INS.

This is not to say that we see no need for enforcement efforts, nor that we disagree with all of the Commission's recommendations in this area. In fact, we believe that the Commission submitted some very positive recommendations regarding the training of INS officers, such as familiarizing them with the rights of aliens and training officers to deal with persons of other cultural backgrounds. In its section on Professionalism of INS Employees, the Commission specifically recommended establishment of a code of ethics and behavior for INS employees, raising employee morale through salary increases and improvements in employment conditions, rewarding meritorious service and sensitivity and conducting vigorous investigation of, and action against, serious allegations of misfeasance, malfeasance and corruption by INS employees. These recommendations address the often cited problem of INS officers abusing apprehended aliens. They are steps in the right direction. Nevertheless, there needs to be more teeth to the complaint and disciplinary process.

There is one enforcement recommendation which we totally oppose. I refer to the Commission's proposal that, whenever possible, aliens should pay the transportation costs of deportation. We believe that such a measure would be inhumane and highly susceptible to abuse.

Before I depart from the subject of enforcement, I would like to make a few comments on the Select Commission's recommendations regarding immigration law enforcement by state and local police. We support the Commission's recommendations that these officers be prohibited from enforcing immigration law. Both the Consitution and the Immigration and Nationality Act envision immigration policy and its enforcement as exclusive federal concerns, preempting and thus prohibiting state and local intervention in such matters.

The Commission's acknowledgement of this fact notwithstanding, its recommendation lacks substance. Given the failure of earlier federal statements against state and local enforcement of immigration laws, only an express statutory prohibition, accompanied by strong sanctions, will effectively discourage state and local police involvement in this area.

A second reservation we have about this recommendation is that it prescribes that local officials continue to be encouraged to notify the INS

when they suspect a person arrested for a violation unrelated to immigration to be undocumented. We object to the use of such vague terminology in our immigration policy. This type of language ignores Constitutional prescriptions and leaves too much room for abuse and circumvention. It is entirely unclear what constitutes a well-founded suspicion. It could be based on a person's "foreign" appearance—or, it could be a result of an interrogation into the person's immigration status (which is outside the local officer's jurisdiction).

Such subjective judgments on the part of local and state police would undoubtedly lead to discriminatory treatment of Hispanics and other ethnic minorities. This, in turn, would aggravate the general mistrust of authorities already prevalent in many minority communities.

EMPLOYER SANCTIONS

MALDEF strongly opposes any form of employer sanctions as well as any type of new national identifier which may be instituted to enforce such sanctions. We believe that the risks engendered are wholly unacceptable considering the limited impact employer sanctions are likely to have in deterring employment of the undocumented.

Hispanics and other minorities fear that the imposition of employer sanctions would result in the denial of equal employment opportunities to fully qualified individuals. For example, well-meaning employers, fearful of government sanctions, may shy away from hiring persons who appear "foreign". On the other hand, employers who are predisposed not to hire minorities could use the sanctions as an excuse to avoid hiring qualified minorities. In any case, untrained and inexperienced employers are likely to err in their assessment of a person's work eligibility.

The majority of the Commissioners voted for the creation of a new national work identification system to accompany their recommendation for employer sanctions. MALDEF is opposed to the imposition of a new work ID for several reasons. First, we see no need for it. The United States already has a national work identifier—the Social Security card. Every person employed in this country is required to possess this document. Creation of a new identifier would result in unnecessary administrative costs.

Secondly, any new national identification card system creates substantial dangers to the right of privacy. At a minimum, such an identification card is likely to be used for purposes other than work status identification. This would render it a ready mechanism for abuse of confidential information. Furthermore, no national identification card system would be totally free from error. To rely upon such a system to ascertain work eligibility will invariably result in the denial of employment to some fully qualified individuals.

It is also unlikely that any national identification card system could be kept free from fraud. Currently, even the most intricate government documents are falsified. There is no reason to believe that a national identification card would be immune.

It is our firm belief that minority individuals would bear the brunt of the imposition of employer sanctions and a national ID card. We further believe that the incentive to hire undocumented workers could be removed through other, less socially disruptive measures. A truly positive step in controlling illegal immigration would require stronger enforcement of existing wage and working standards laws. Bolstered enforcement of existing labor provisions does not involve negative features of employer sanctions. Moreover, it will ultimately enhance the possibility for a precise, acceptable remedy to this most complex situation.

GUESTWORKER PROGRAMS

MALDEF continues to oppose the continuation of an H-2 program. We had hoped that the Commission would have recommended abolishing this program. Notwithstanding, the Commission's efforts to recognize the inadequacies of the current H-2 temporary worker program and the recommendation to improve its fairness brings us a step closer to eradicating peonage labor. We agree that requiring employers to extend the same benefits to foreign workers as they do to U.S. workers will be in the best interest of all involved. It will protect the foreign workers from exploitation, protect the U.S. labor market and reduce employers' dependence on H-2 workers. We also believe that the Commission made a wise decision not to create a new guestworker program for Mexican workers.

We are concerned, however, with recent statements by President Reagan which indicate that he is not dismissing the possibility of a Mexican guestworker program. We hope that the president and the congress will heed the advice of the Commission in this area.

CONCLUSION

Although we do not agree with many of the recommendations made by the Select Commission, we recognize the value of the comprehensive study it conducted. As I mentioned earlier, many issues still need further study and the Select Commission's Final Report should not be viewed as the ultimate solution to our immigration problems. It shoud be looked upon as a starting point for further discussion. Much work remains to be done by congress and the administration in the formulation of future U.S. immigration policy. It is important that they consider not only the recommendations of the Select Commission, but the responses of various segments of the population to these recommendations as well.

One Economist's Look at the Select Commission's Final Report

JULIAN L. SIMON*

The first thing this economist sees in the Select Commission's Final Report is that most of the issues are not really economic. One main issue is law and order, the desire that our immigration procedures should be orderly and in that way fair, and not breed contempt for our social rules. Another main issue is compassion for separated families.

I feel personally that the Commission struggled decently and honestly with these important human issues, and I honor them for it. Yet, I believe that primary concern with these issues had led our economic welfare to be short-suited, even though there is no necessary conflict between the economic and noneconomic values.

The economic question in immigration policy is: how many immigrants, with work characteristics such as age and occupation, will be allowed to enter? Two matters are involved: 1) what will be the effects in the short- and long-run, upon the average standard of living and upon the rate of income growth, of the citizenry as a whole? and 2) what will be the effects upon particular groups of people, especially the lower-income?

Elsewhere (1981), I have written at length about the fact that the average immigrant family has a decidedly positive effect upon the standard of living of native Americans, and I will summarize some of the arguments later. The Select Commission apparently agrees that immigrants have a positive effect (pp. 99-100). Yet the Commission's main recommendations run directly against this conclusion because their recommendations would reduce the total number of purely economic immigrants—that is, those persons who come to the U.S. to make a better living—as compared to the present number of entrants.

Let's clear some ground. Although the Commission agrees that immigrants improve the average standard of living of natives, it talks of "limits on the ability of this country to absorb large numbers of immigrants

* Professor, Department of Economics, University of Illinois.

effectively" (p. 5). The most important limit on immigrant absorption is private and public capital to work and live. Yet, the burden of absorption because of capital dilution is the same per immigrant with the first immigrant as with the millionth, on the average. That is, there is no economic force or sets of economic forces that make it progressively more costly to absorb immigrants, and which eventually come to counterbalance the positive effects. So there are indeed "limits"—but the limits are the same for a small number as for a large number, and this notion does not help us decide how many immigrants to permit to enter.

The Select Commission recommends what they call a "modest increase" in the "front door" numerically-limited immigration quota, from 270,000 yearly to 350,000. At the same time, the Commission recommends closing the "back door" on illegal immigration and recommends speeding up immigration for family reconciliation. The likely overall effect of the latter elements would be to decrease substantially the number of entrants in the prime working ages more than the increase in the overall legal quota would produce. As I read it, this implies that the economic level of natives will, therefore, be lower than it would be otherwise, with more economic immigrants. This is the biggest point I see as an economist.

Another thing I see is that the Select Commission seems to have been affected in its judgment about the overall quota by the assumption that a larger quota implies harder times for the lowest-income group. Underlying that assumption is the notion that immigrants are concentrated in the lower-income occupations. In fact it is not the case that immigrants have less education and professional skills than natives, on the average. Nowadays legal immigrants arrive with considerable education and skills, and they enter a wide variety of occupations, hurting no occupation or income level much even in the short-run.

The lower-income natives benefit from having more highly-skilled immigrants come in, both because their own wages go up as the complementary high-skill factor of production increases, as well as because they can benefit from the greater pool of skills—medical, for example—resulting from the entrance of the highly-skilled immigrants.

Concerning the total number of jobs available, as long as the immigrants are spread across the occupational and income spectra, they can be expected to create as many new jobs with their purchases as they take. As John Toland put it in 1714:

> The vulgar, I confess, are seldom pleas'd in any country with the coming in of Foreners among 'em...from their grudging at more persons sharing the same trades or business with them, which they call *taking the bread out of their mouths*. . . We deny not

> that there will thus be more taylors and shoomakers; but there will also be more suits and shoos made than before. If there be more weavers, watchmakers, and other artificers, we can for this reason export more cloth, watches, and more of all other commodities than formerly: and not only have 'em better made by the emulation of so many workmen, of such different Nations; but likewise have 'em quicker sold off, for being cheaper wrought than those of others, who come to the same market.

The Report makes it seem as if the desire of people to come to the United States, illegally if they cannot get in legally, is a burden upon us. Maybe it is. But perhaps we might also perceive this desire to come as a great triumph for us as well, a mark of America's success in creating a society and economy that people want to be part of. I have not heard that the Soviet Union has a similar problem with immigrants entering that country illegally.

On the other hand, perhaps we should not overestimate this success and let it go to our heads. The whole world is not clamoring to come to the U.S., despite what is sometimes said. I have not seen good data on just how long one must wait to get into the U.S. But the sketchy data I have seen suggest that the demand in very few countries is of such overwhelming proportion that people must or will wait for many, many years; from most countries the waiting time is not very long at all. For example, there were only 31,700 active immigrant visa applications in India as of January 1, 1980 (p. 146). Altogether, there are only about 300,000 people registered at consular offices for visas who are not relatives of U.S. citizens or resident aliens (p. 15). Good data plus analysis of this question would be interesting. If we were to raise the total quota by 50 percent—a rate of immigration still vastly below the immigration rates relative to U.S. population in earlier decades—we might even exhaust most of the demand (though such a move might conceivably increase the demand, too).

Now let us consider the effect of immigrants upon the pocketbook and standard of living of natives. I analyzed data from the 1976 Survey of Economic Opportunity, carried out by the Bureau of the Census, which gathered detailed information on the income and use of social services by over 150,000 families, including about 15,000 immigrant families.

The results show that from the time of entry until about 12 years later, immigrants use substantially less of such public services as welfare and unemployment compensation payments, food stamps, Medicare-Medicaid and schooling for children than do native families, largely due to less use of Social Security because of their youthful age. Later, when the parents in the immigrant family retire and collect Social Security, they typically have raised children who are then contributing taxes to Social Security and thereby

balancing out the parents' receipts, just as with native families. In this way there is a one-time benefit to natives because the immigrants arrive without a generation of elderly parents who might receive Social Security. After about 3-6 years, average immigrant families come to earn as much as average native families and thereby pay as much in taxes as do native families; after that they earn and pay substantially more. The net balance of these two forces—taxes paid and services rendered—is positive in every year for natives. That is, immigrants contribute more to the public coffers than they take from them. When looked at as an investment by natives, similar to such social capital as dams and roads, an immigrant family is an excellent investment worth somewhere between $15,000 and $20,000, even calculated with relatively high rates for the social cost of capital (this is in 1975 dollars, to be compared with mean yearly native family earnings of about $11,000 in that year).

Illegals get little welfare services due to their status. North and Houstoun found the following proportions of illegals using services: free medical, 5 percent; unemployment insurance, 4 percent; food stamps, 1 percent; welfare payments, 1 percent; child schooling, 4 percent. Practically no illegals receive Social Security, the costliest service of all, but 77 percent of illegal workers paid Social Security taxes and 73 percent had federal income tax withheld.

To put this in stark terms: we are very properly worried about the Social Security system because the ratio of retired persons to those in the working age is becoming a difficult burden. Immigrants typically are additional young workers who help support our retired persons and bring no retired persons for the Social Security system to pension, hence each immigrant family makes an immediate and large contribution toward reducing the Social Security burden.

Immigrants can harm natives through "capital dilution", that is, Malthusian diminishing returns caused by the presence of more workers working with the same capital. If the private sector were like the government sector—where workers' pay is assumed equal to the full value of what they produce, with nothing left for the owner of the capital—then capital dilution would indeed lower average native income. But in the private sector additional workers imply higher earnings by owners about equal to the loss of earnings by other workers, a trade-off leaving native per capita income unchanged.

Regarding the public capital used by immigrants: we must worry only about the additional capital outlays needed to equip immigrants—the extra schoolrooms, hospital beds, firehouses and the like. The use of public goods not affecting natives' use or pocketbooks—looking at the Washington Monument, or riding on a lightly used interstate highway—is not relevant.

Luckily we are spared difficult conceptual problems of valuing existing capital because we are nearly on a pay-as-you-go basis with respect to capital expenditures; the debt service on past public borrowings roughly equals outlays on new capital. So through taxes, immigrants pay enough "rent" on public facilities so that natives feel no extra burden.

Let us consider what is likely the most important long-run effect of immigrants: the impact on productivity of these additional workers and consumers is likely to dwarf all else after a few years in the country. Some productivity increase arises from immigrants working in industries and laboratories in the U.S. that are at the forefront of world technique. We benefit along with others from the contribution to world productivity in, say, genetic engineering that immigrants would not be able to make in their home countries.

Other increases in productivity come from increased production in particular industries through learning-by-doing and other gains from larger industry scale. I built these productivity benefits into a macro-model along with the other factors mentioned above, and the calculations indicate very large increments to natives' incomes.

In sum, immigrants benefit natives through the public coffers by using less than their share of services and paying more than their share of taxes. They cover the additional public capital needed on their account through the debt service on past investments. In the long run, lower-paid workers will not suffer from the new immigrants because immigrants' occupations and educations cover the income spectrum. Yet some native workers do suffer from short-run dislocation, just as imports of goods cause temporary dislocation of some native workers. The same general-welfare argument applies as for free trade, but it is cold comfort to the dislocated persons. Other than this inequity, immigrants viewed in economic terms seem an excellent bargain.

There are still other economic considerations that are harder to pin down with data but that are likely to bode well for natives. Immigrants are likely to save more, because they start out with fewer assets. They are likely to work harder because, not having assets and economic security, they are apt to act hungry. For the same reason, they are likely to be more mobile in search of economic opportunity, and such mobility is crucial in keeping the economy in adjustment. Immigrants seem to be more innovative than people who have never changed countries, and innovation is vital in boosting productivity. And perhaps most importantly, immigrants—and especially the young people—are more hopeful and have more of a forward-looking outlook, according to data on Vietnamese, Mexicans, Russian Jews and native Americans collected by Rita Simon. In a time when our nation often seems afflicted by the paralysis induced by self-doubt and loss of con-

fidence, this hopeful view of the future—and of America as their land of opportunity to reach the hopeful future—is especially important to our economy.

The Report says that the U.S. cannot "become a land of unlimited immigration" (p. 2). Let's put that in perspective. In 1907 there were 1,285,349 immigrants, when the U.S. had a population of 87,008,000. Over a million immigrants came in 1905, 1906, 1907, 1910, 1913 and 1914, a total of more than ten million for that decade. In recent years immigration has been about a third of that high-water mark—around 400,000 a year or less—while our population is about three times as great. So the rate of immigration now is about a ninth what it had been relative to population size, and yet the country apparently flourished then.

Why are we so worried about what we think is an additional burden now—especially when the immigrants do not increase our burden, but rather lighten it? In the late 1940s and '50s we managed to give college educations to unprecedented numbers of ex-GIs, and at the same time start a vastly costly Interstate highway system without a great sense of burden. Then, we proceeded to pour even more resources into that Interstate system while our school system bulged with the children of the baby boom, and we spent large proportions of our income for defense, again without feeling that we couldn't cope, though the burdens really were large. What has happened to our spirit? What has happened to our minds, when we can see that the one major problem facing us—supporting the aged—is directly helped by more immigrants?

The Report itself notes that "By the end of the 1970s, the proportion of foreign-born persons in the United States was actually lower than at any previous point since 1850, when statistics were first kept and one out of every ten U.S. residents were foreignborn" (p. 94). To say now that we no longer can handle unlimited immigration seems like discussing whether there is room for an elephant in the boat when in fact it is only a mouse that is trying to get on board. And remember that this is at a time when our schools are closing for lack of students; when we have more housing space per person than ever, and more recreation parks and nature areas; our Interstate system is complete; and the longterm outlook for natural resource supply is better than ever.

The Select Commission views as an apparent benefit of "lower levels of immigration" that they would "reduce the time until the United States will achieve population stability" (p. 103). Yet, there is no economic evidence showing that population stability in the foreseeable future is desirable. As a goal, population stability has the status of a personal taste or prejudice rather than a demonstrably beneficial possibility.

The Commission unanimously rejected a temporary worker plan. The

reasons were that European countries had difficulties with the temporary workers not going home when the host countries wanted them to. The Commission's reasoning may have been sound with respect to guestworker plans as they have operated in Europe. But I believe that new and imaginative guestworker plans could be devised that would yield most of the benefits of the traditional plans while avoiding the overstay problem. For example, my colleague Larry Neal has described plans by which the guestworker's Social Security payments are credited to his or her account in the home country, thereby giving the guestworker an excellent incentive to return home when the work period has ended. I hope that such plans are considered, rather than all guestworker options being rejected out of hand on the basis of the Select Commission's recommendations.

A last note: The Report begins with this quotation from Hillel:

> If I am not for myself, who will be for me? But if I am for myself only, what am I? And if not now, when?

I admire this sentiment as much as anyone. But I believe that it does not fit the central economic issue of immigration into the United States now. Though we may have charity in our mind when we think of immigration, this should not cloud the fact that we are also bringing in immigrants for our own sake. Indeed, this is one of those rare opportunities when we can do well while doing good. In that vein I will read some excerpts from a letter I received last year about an article I wrote that was reprinted in the Columbia, S.C. newspaper:

> Dear Professor Simon:
>
> Your article about the economic impact of immigrants reprinted here in *The State Record* in Columbia has encouraged me a lot. Your argument has really relieved my doubt about being a burden for this country. I am a Vietnamese refugee arriving in 1976.
>
> If the American public has a supporting and fair attitude . . .the immigrants would be able to be more productive. A negative and false opinion about our situation really discourages the young generation to stand up with dignity and to contribute to build up our society. . .Somehow the American public expects to hear another kind of message such as: truly the immigrants are burdensome, but the great country of U.S.A. will make sacrifices to help out.
>
> It is unhealthy. I think all immigrants should renounce to the idea of charity. Nobody can maximize the potential without

being recognized and expected to do so.

Signed,
Chris Le

Recently my eldest son showed me an interesting paragraph in the Declaration of Independence of the Thirteen United States of America. In the list of "causes which impel them to the separation", the Colonists "submitted to a candid world" this "fact" about the King of Great Britain: "He has endeavored to prevent the population of these states; for that purpose obstructing the laws for naturalization of foreigners; refusing to pass others to encourage their migration higher; and raising the conditions of new appropriations of lands". Americans then were quite sure that immigrants were good for the country. And it is still true that more immigrants are good for us, though they may impose costs in the very short run, and though some must suffer more adjustment costs than others. And we should let them in for our sake, not just for theirs, just as Mr. Le wrote.

REFERENCES

Simon, J.L.
1981 "Adding Up the Costs of Our New Immigrants". *The Wall Street Journal*. P. 22. February 26.

Toland, J.
1980 "Reasons for Naturalizing the Jews in Great Britain and Ireland." In *The Jew in the Modern World*. Edited by Paul R. Mendes-Flohr and Jehuda Reinharz. New York: Oxford.

The Proposed Immigration Model: A Response from Organized Labor

Jay Mazur*

It is often said that America is a nation of immigrants. Let me rephrase that statement. . .The American Labor Movement is a movement of the descendants of immigrants. Our living legacy is that of the Golden Door; that of the attraction of America for those seeking liberty, opportunity and a better way of life.

Early in this century, when the flow of immigrants was at its peak, our union—the International Ladies' Garment Workers' Union—was founded by a small group of newly arrived immigrant workers. As our struggle for dignity and justice in the workplace progressed, immigrants of all nations flocked to our ranks and became leaders and workers in our cause.

The historical alliance between the ILGWU and the nation's immigrant workers is well and alive today. On east and west coasts, the ILGWU is actively and wholeheartedly engaged in the struggle to organize the newest of immigrants. Many of these immigrants—Mexicans, Chinese, Koreans, Haitians, Salvadorans, Latins of all nations—are already committed members of our union, working with us to redeem the promise of America, the same promise that lured our union parents, including my own, to this shore. This is the legacy of my union.

In this article I will offer our reflections, derived from our long experience, and inextricably linked to the cause of the immigrants and the struggle for social justice.

All of us know that ambivalence and contradiction mark the history of U.S. immigration policies. We have alternated between openness and restrictionism of some form. The task of immigration policy today is to reconcile these opposites. We seek to establish a coherent, consistent policy, consonant with the best of our humanitarian and democratic traditions. However, our interest also lies in fashioning a workable system of admitting immigrants in a world where the number of would-be newcomers exceeds

* Vice President, I.L.G.W.U.

the places for them in our society. The question before us then, is this: how well has the Commission performed in light of these criteria, difficult and trying as they may be? From the patchwork of rules and administrative decisions that now govern immigration into the United States, the Commission has made major strides towards creating an immigration system. It has wisely recommended that we retain the basic component of our immigration policy—namely the principle of family reunification. It has been suggested that we raise the number of people to be admitted as permanent immigrants and it has taken this important step despite the unhappiness with immigration that certain segments of the public have shown. The Commission has done much to help remove the inequities of the present system and has made a commendable effort to ensure that the principle of family reunification is not vitiated by narrow legalistic definitions of what a family is.

Finally, the Commission has shown considerable courage in not giving in to the seductive, but deceptive claims of those who have urged an expanded temporary workers program.

These are among the Commission's major accomplishments and there are many more that could be mentioned. Yet, a complete and fair reckoning of the Commission's work must acknowledge the fact that its effort has been weighted down by the woeful consensus that exists on the issue of illegal immigration. The inheritance of a decade of sluggish growth, high unemployment rates and raging inflation can be read all too easily in public opinion. As poll after poll has shown, the blame for our economic policies has been successfully cast on illegal immigrants. The public, unfortunately, seems to have decreased tolerance for immigration. Most distressingly, they endorse radical deterrents against illegal immigration, and they want those deterrents in place now.

Many of us had hoped, when the Commission was organized, that it would dispel the many myths that surround the issue of illegal immigration. We had hoped that the Commission would see its mandate as also an educational one, that it would talk straight to the American people about the real impact of immigration on our society. Unfortunately, the Commission has not been able to accomplish this task. More disturbingly, the Commission did not feel strong enough to stand up to the consensus and to cut through the misconceptions that plague our immigration policy.

I cannot accept the conventional wisdom that undocumented immigrants are to blame for the economic mess in which we find ourselves, nor have they contributed to it. To agree with that idea is to engage in scapegoating. To go along with the conventional wisdom is to pretend that high interest rates, the profit-seeking of multinational corporations, the exodus of industry from our cities and the impending fit of uncontrolled budget cutting are not chiefly responsible for 8 to 9 percent unemployment and double

digit inflation rates. To assert that undocumented workers have pushed millions of American workers out of their jobs is to contradict the reality of unemployment today. It is to deny the evidence that unemployment is massively concentrated in the basic industries, where a combination of factors—captial flight, plant shutdowns and misguided economic policies—have pushed hundreds of thousands into joblessness and unemployment rates up to the double digit level. To insist that it is undocumented workers who are responsible for unemployment is to pretend that discrimination has no effect, when in fact the unemployment rates for black teenagers are 2 to 3 times the rates for their white counterparts.

The Commission, however, has not inquired into the real causes of unemployment. The results of the failure—with its vast overestimation of the negative effects of illegal immigration—are painfully evident in the Commission's recommendations on amnesty.

The Commission forfeited the chance to endorse a full and immediate amnesty. Instead it has recommended a partial legalization. More unfortunate still, it failed to specify a cut-off date for the residency requirement. In doing so, it has left the door open to attempts to reduce the pool of eligible undocumented immigrants currently living in the United States. Moreover, the Commission did not suggest that this legislation be instituted immediately. Rather, it offered suggestions that will prompt delay until other parts of the immigration package are put into effect.

I hope that the congress, or other immigration policymakers, will reconsider these answers and take another look at the only humane and workable solution: a total and immediate amnesty. Anything short of this raises the specter of mass deportations and of an impossible and arbitrary attempt to sort out one type of immigrant from another.

America has the economic strength to absorb the additional immigrant population that full and immediate amnesty will entail. The research on this question, I believe, bears me out. Of course, we can fortify that strength by promoting wise economic policies that will bring down the aggregate level of unemployment and this will ease public fears about the impact of full legalization. What we need most, however, is the determination and the conviction to move forward in a way that will restore equity and justice to our immigration system.

The partial amnesty proposed by the Immigration Commission is tied to a comprehensive package. The cornerstone of that package consists of the deterrent measures proposed by the Commission, of which employer's sanctions and a work identification card are the most important.

A fact often hidden from the immigration debate is: the deterrent measures proposed by the Commission do not represent simple or logical extensions of existing regulatory practices. The case is quite the contrary:

employer sanctions would be a unique departure from the regulatory practices that have evolved over the past half century.

Most labor market regulations apply to the employer's conduct. For example, there are regulations that mandate minimum working conditions, and there are other regulations that prohibit discrimination.

In contrast, the thrust of employers sanctions is far-reaching, Sanctions would not only involve the regulation of the employer's behavior, but would activate the employer to regulate the prior, nonemployment related conduct of current or prospective employees. Sanctions would force the employer to assume an enforcement role for the INS, would make the employer the judge of whether an applicant had violated the laws or not and would place punitive power in the hands of the employer by allowing him to determine whether an employee was eligible for hiring.

Clearly, such an approach raises deeply troubling questions about the impact that such a system would have on civil liberties and about the relative power and authority that an employer can exercise over the workers in his employ.

In making the case for employers' sanctions we are not sure that the Commission considered the issue in its totality, that it explored the potential impact of employers' sanctions on the other regulatory goals to which we all are committed.

Did the Commission ask whether regulatory agencies could enforce employers' sanctions without detracting from their activities in the basic wage and hour field? Did the Commission ask what happened the last time additional burdens were placed upon labor standards agencies? Did the Commission ask whether congress appropriated additional funding and allowed for additional personnel the last time it enlarged the mandate of the labor standards agencies? Did the Commission ask whether a congress and a government afflicted with budget-cutting fever are about to appropriate huge sums of money for a massive, untested program without eliminating funding for other needed time-tested programs?

If the Commission posed these questions, it should have realized that labor standards agencies are still suffering from the effects of previous additions to their jobs. It is all too clear that the enforcement of basic labor standards has deteriorated as the agencies responsible for policing the labor codes have gained a series of additional responsibilities. It seems that the case for employer' sanctions has never really been made on its merits. I have yet to hear anyone talk seriously about enforcement mechanisms such as funding—all the life and death questions on which any program falls or stands. The case of employer sanctions has been made by those who profess to realism, claiming that this is what the public wants. If we want amnesty,

the realists say, then we have to bow to public pressure on this point and signal the seriousness of our intentions. I don't agree that this is realism. In endorsing sanctions, its proponents are proposing a course from which there may be no retreat. If sanctions do not work, they may not be easily undone. What is more, the sequence that the realists propose is badly out of sync. Employers' sanctions will be put in place before amnesty. Lest anyone misjudge the temper of today's congress, I can assure you that there is far more support for sanctions than there is for amnesty. The eventual outcome, then, may be the enactment of employers' sanctions without any amnesty—full, partial or otherwise.

I do not seek to be a naysayer. I realize that there are several constraints on our ability to admit potential immigrants, and I strongly endorse efforts to stem illegal immigration.

I do think that there are positive steps that will move us in this direction, steps that have not been placed on the political agenda. As far as illegal immigration is concerned, our goal should be to eliminate the economic incentives that lead employers to hire illegal immigrant workers. We need to lift the floor under wages and working conditions and to make it unprofitable to hire workers at what is much less than a living wage. We need to beef up enforcement of labor standards; we need an enforcement arm that is adequate to the task at hand; we need to supplement the 1,100 inspectors working for the Federal Wage and Hour Division. We have to give these inspectors the manpower and the funding so that they can make a real dent in the job of policing the 5,000,000 workplaces under their jurisdiction. We need an inspection force that will speed up the rate of inspection so that we do not have to wait until the middle of the next century for all the workplaces to be inspected. Vigorous enforcement should be complemented by stiff fines and penalties and confiscation of goods made under illegal conditions. Repeat violators of labor standards need more than a slap on the hand to learn that laws against exploitation are not just a joke. Finally, we need to give workers more of a voice in the determination of conditions on the job, and that means restoring the rights to organize that have been steadily whittled down during the past 20 years.

Of course, no effort can succeed unless the immigration debate is taken to the international arena and unless the U.S. immigration policy takes the foreign policy component into account.

Creating an immigration policy that will succeed is clearly the order of the day. With the delivery of the Commission's report, the immigration debate has entered a new phase. In that phase, politics is the dominant key.

Politics means mobilization; and mobilization, to be effective, means coalition-building. I believe that the foundation for such a coalition already is in place. We can agree on a set of concrete proposals that will reform our

immigration policies in an equitable way and deter illegal immigration without endangering our democratic traditions. I believe that we have the ability to act effectively on such proposals because we have already learned how to agree and work fruitfully together. We in the ILGWU have worked with numerous groups on what has been, up to now, an *ad hoc* basis. We have rallied to the cause of the Haitian refugees and have helped to support the Refugee Act of 1980. We want to work with others concerned about the newest wave of refugees from El Salvador.

Now is the time to put this coalition on a sound and sure footing. To exert influence, we must bring our forces together. To be heard, we must speak with one unified voice.

We share a compelling vision of the immigration policy that we want. Let us take that vision and make it a reality.

The Proposed Immigration Model: A Response

CAROL BELLAMY*

In the life of a politician it's a rare occasion when modesty is the best policy. However, that's certainly true for me when it comes to talking about illegal immigration. Looking through the Select Commission's Report, and particularly when reading the Commissioners' supplementary remarks, I find myself nodding in agreement first with one viewpoint, then with the opposite. I gather I'm not alone in feeling that way.

For example, on the issue of imposing sanctions on employers who hire illegal aliens, Chairman Hesburgh is certainly right to point out that such sanctions will introduce a healthy consistency into a system which seems to have been incapacitated by special interests. Michael Teitelbaum is certainly right to add that employer sanctions remove the unjust "asymmetry" which currently allows employers to browbeat workers or even deny them their wages simply by threatening to call up the Immigration and Naturalization Service. Of course, the employee cannot call the Labor Department to report a work violation without risking apprehension. At the same time, however, I can understand that when we shift the burden of responsibility to the employer, we may only replace the injustice of the *denuncia* with the injustice of harassment prior to employment, or of rejecting "foreign-looking" citizens from jobs. This is a problem to which the International Ladies' Garment Workers' Union is rightly sensitive. Also, of course, there are the civil liberties implications of a verification system, with the enormous bureaucracy that would have to be created, even if we substitute a call-in system for an identity card.

In the case of this difficult problem of employer sanctions, as in so many other aspects of the immigration problem, we end ultimately with a political decision—not simply in the crass, porkbarrel sense of trade-offs among constituencies, but in the more profound sense that we have to resort to fundamental principles of justice and equity, to basic assumptions about what motivates people and how they will behave, and, I think, to some beliefs

* New York City Council President.

about our particular American political culture and how we expect it to respond on balance to certain policy decisions and media reports.

For example, we know from the experience of the Japanese in California in World War II how our culture is capable of responding to the perception that things have gotten out of control. We know, too, that a perception of legal breakdown troubles Americans deeply and can lead to violations of civil liberties quite as serious as those which occur when we have "too much" law.

In short, the trade-offs we have to make in dealing with illegal immigration are trade-offs fit for a philosopher king—or queen, as the case may be.

Let me share quickly some of the trade-offs I'm leaning toward making. I then want to point out some of the differences between illegal immigrants in New York City and those in the Southwest, differences which perhaps have influenced my sense of what the trade-offs should be. Last, I think it's appropriate to indicate a few matters which impact New York City, but were not substantially addressed by the Select Commission.

To begin with the example I've already sketched, I think that it must be made illegal for employers to hire illegal aliens. Even without any active enforcement outreach, it seems to me that this important change in the law would put a damper on threats by employers to turn in illegals, simply because in so doing they'd be turning in themselves as well. There is a certain appealing sanity to that, and I'm tempted to stop right there.

Of course, enforcement is indispensable to the law's credibility. My approach would be conservative. By that I mean that if we could get the INS to operate half as efficiently as the IRS—with enough spot checks and penalties to make unscrupulous employers think twice—I think we'd have gone a long way without approaching the police state which rears its head in so many people's imaginations.

It is precisely because I do not minimize the danger of abuses that I'd prefer to avoid the identity card system, even one hedged in by the familiar guarantees that the card not be used for any other purpose or have to be carried at all times. I would prefer the affidavit approach supplemented by energetic if somewhat selective spot-checks. I think this is close to Commissioner Holtzman's position, and that if coupled with her recommendations for INS retraining and reorganization, it has as good a chance of working as any other sytem.

I would insist that such a system be supplemented by vigorous enforcement of our labor practice laws, which would help to remove exploitation without necessitating an enormous special bureaucracy for aliens as such. I realize that the Reagan policy toward OSHA and business regulation generally doesn't augur well for my suggestion. But here I think we have to

make the cultural assessment I mentioned a moment ago, and mount an appeal to a basic strain in American Conservatism, namely that those laws which do stand should be enforced.

We need to seek out and bring on board those conservatives, be they Barry Goldwaters or William F. Buckleys, who can understand that such enforcement of workplace laws is both a matter of credibility for the system and a way of minimizing the necessity of a special bureaucracy for aliens, with all its threats to individual liberties which genuine conservatives abhor. Whether such an appeal can build a consensus powerful enough to work remains to be seen, but I believe we should try. I hope chairmen Simpson and Mazzoli will be receptive to this kind of workplace enforcement, and I think President Reagan's extraordinary review committee offers some hope.

Regarding amnesty itself, it is crucial that, as Commissioner Otero said, everyone be permitted to come forward—to begin moving toward legal status even if not immediately obtaining it. The proposed elimination of Legal Service, the only road to redress for most aliens in borderline cases, seems to make a broad policy particularly crucial.

But precisely because a broad amnesty would make immediate relatives eligible for entry, we should have a realistic reassessment of the Select Commission's proposal for "modest" increases in the up-front, official admission ceilings. If we take amnesty's ripple effect into account, these ceilings begin to seem too high.

It is important to remember, after all, that the United States admits legally almost twice as many immigrants as are admitted by all the other nations of the world combined. That is not to overlook our role in generating the "push" factors in many countries, and I must say I'm not one to push foreign policy under the rug when it comes to facing the problem of illegal immigration. No one pretends that even a strong human rights policy and unprecedented support for land reform in Latin America would resolve the problems or poverty and unemployment overnight, or that our own employment needs would not continue to attract job-seekers in certain categories. Yet no one should minimize the economic and psychological impact of a regressive policy, either.

New York City is somewhat of an anomaly compared to Los Angeles and centers of Mexcian immigration generally. Relatively speaking, our immigrants have more skills, education, even resources. If the Center for Migration Studies' samplings are indicative, as many as 25 percent of the illegal immigrants are unionized, and a much higher percentage do make at least the minimum wage.

Though most of New York City's illegal immigrants come with the inten-

tion of returning to their homelands, more of them tend to stay longer, if only because return is so difficult when it is not a matter of simply slipping across a border. This often means that they are older and more determined.

I think New York's illegal immigrant population is ethnically more diverse, as well. There are thousands of illegal Poles and Italians, along with black West Indians, Haitians and a large number of Asians for an eastern city. Dominicans are currently our dominant illegal Hispanic group, both in numbers and in economic position; Msgr. Bevilacqua reports that his Brooklyn Diocese alone has 110,000 illegal Dominican residents.

There are a large number of entrepreneurs, such as small shopkeepers and businesspeople or restaurateurs. This, combined with the relatively high unionization rate and consequent high level of taxes withheld from paychecks, makes me wonder whether illegal immigrants are quite the drain on New York's economy that some people think.

On the other hand, New York's economy is not as strong as that of some Sunbelt cities, and certainly the relationship between tax revenues and public services is more precarious, particularly in our municipal hospitals, which the illegal immigrants do utilize. Yet the school situation, which so bedevils San Diego, California or Brownsville, Texas, presents a special irony in New York: far from having to rush to build schools to accommodate the immigrants, we are able to keep open a number of sound facilities which might otherwise be wastefully abandoned—though not, of course, without federal help.

One possibility which troubles me is that the relative productivity and success of the illegal immigrant population—and again I emphasize the word "relative"—raises expectations among the immigrants' children, who are Americanized and who realize that return to the familial country of origin is a receding possibility. As Michael Piore and others have pointed out, the failure of American blacks and Puerto Ricans to move substantially up the economic ladder a step ahead of the illegal immigrants may lead to a "leapfrog" effect and/or to bitter conflicts among minorities.

What New York City needs from the federal government is, first, what Puerto Ricans of all political persuasions in San Juan have been calling for: tighter federal control of entry through Puerto Rico.

If it takes considerable skill and resources to arrange a "tourist" visa, it takes something less to slip into Puerto Rico on a shopper's pass and board an internal domestic flight to New York. Puerto Rico is New York's southern analogue of the Mexican border.

Obviously, a crackdown on the visa process is also required. Again, I know that Commissioner Holtzman has made a number of valuable suggestions in this regard.

Regarding enforcement in general, I can say with some assurance that New York City offers an excellent opportunity for the federal government to prove that its policies are not racist. We have illegal immigrants of every background in substantial numbers.

Speaking of substantial numbers, New York needs reimbursement from the federal government for health care, education and other services, a need shared by so many other cities solely because of the federal government's inability to enforce its laws. Estimates vary, but I have never heard anyone suggest that we have less than half a million illegal immigrants in New York City, nor have I ever seen anyone raise an eyebrow at the suggestion that the figure is closer to three-quarters of a million. Neither have I heard anyone suggest that anything approaching half of this population was counted by the census. If the federal government says New York has 7.1 million people, I can say with some confidence that we have 7.6. If they say 6.9, it is really 7.4. If I can paraphrase Everett Dirksen a bit loosely, we take half a million here, and half a million there, and pretty soon it adds up to real people.

Obviously this is an impossible burden to add to the inequities in federal reimbursement formulae and in federal incentives to capital outmigration which already hobble New York's growth.

I needn't add in any great length that the new federal budget cuts proposed by the Reagan Administration promise to deepen New York City's plight. The proposed cap on Medicaid will create an immediate $100 million deficit in the city's public and private hospitals. Since we've been working for five years to wrench the waste and fraud out of our health care system, these cuts go for the muscle, not the fat. The implications for the health of illegal aliens, and poor New Yorkers generally, are obvious. Relief from federal mandates for handicapped access or sewage treatment cannot come quickly enough.

When you add these cuts to the census undercount and the longstanding inequities, and then add the rising expectations of the immigrants' children, you have an explosive mix. Plus, I haven't talked about white backlash, which will come if we cannot have at least the appearance of sanity in our handling of immigration. That is why I take the positions I've summarized here.

Response to the Report of the Select Commission on Immigration and Refugee Policy: A Local Government Perspective

GRACE DAVIS*

Thank you for the opportunity to articulate a local government perspective on the work of the Select Commission.

Like the rest of you, I was eagerly awaiting the Commission Report. Last year I testified before the Commission and was pleased to see that the final report did, in fact, address many of the issues I raised then. However, I still have strong concerns regarding three aspects of the Commission Report and its future.

First, I believe the Commission did not produce adequate data and conclusions on the impacts of undocumented aliens. I'm particularly concerned that, as a result, we may be pursuing unsuitable policies with insufficient factual grounds. Second, I believe the Commission Report could have gone much farther towards a policy recognition that legal and so-called "illegal" immigration are "two way" issues that result from the origin country's economic or political conditions as much as that of the United States. While the Report's recommendations did include some primary acknowledgement of this dynamic, especially in refugee matters, much more attention should have been focused on specific ways the United States might limit immigration through cooperation with countries of origin.

My third concern is one of feasibility and mechanics: what we can do to insure that issues of national immigration policy receive adequate attention under the new administration. Many have expressed concern—and I share their worry—that these issues will be overlooked in the present fervor to revise the budget, expand defense capabilities, etc. Unfortunately, the Report did not lay out a work program, or any type of "how-to guide" outlining the next procedural steps. It is therefore up to many of us to see

* Deputy Mayor of Los Angeles.

that the immigration issues raised by their Report are not lost. Equally important, we must be alert for signs of a piecemeal—and possibly counterproductive—implementation.

These are three rather broad concerns to which I will frequently return. I will first address the area of undocumented alien policy, because I believe this is the area of greatest oversight. I will then close with some suggested modifications on the Commission's refugee policy recommendations.

My overriding concern is that the issues related to undocumented aliens have received inadequate attention. I am particularly concerned about this because of the large numbers of undocumented migrants—probably close to ½ million—in the city of Los Angeles. These 500,000 people and the institutions they deal with are in a limbo which we have an obligation to eliminate. Today, they are illegally residents, but at the same time only very limited efforts are pursued to prohibit their entry and there are no penalties for employing or servicing them once here. Unfortunately, the Commission recommendations as a whole will do little to eliminate this ambivalence because it does not set a course for, let alone recommend, a consistent national policy.

A major reason for this lack of a consistent policy is the inadequate data regarding undocumented migrants. There have been numerous studies done on the size of the undocumented population and its various impacts on the economy and social system. Unfortunately, these have been isolated studies with widely varying goals and methodology. As a package, they were insufficient evidence on which to base a federal policy. Consequently, many were hoping that the Commission research would fill this gap and result in a more coherent picture by producing a reliable profile of the undocumented worker. At a minimum, many of us hoped the Commission would conclude that such incontrovertable evidence was in fact not available, and that policies needed to be formulated on the best available information.

Unfortunately the Commission did neither. Instead, we are given a set of recommendations with no consensus as to the factors or situations which necessitate them. In fact, the Report almost further confuses the issue by citing conflicting testimony or research, almost as a way to justify not addressing the issue. This strategy is confusing to the local leader and private citizen alike, because in spite of this conflict the Commission makes specific recommendations which generally imply conclusions about the impacts. I well understand the sensitivity of the issues and the hesitancy to openly draw conclusions on debatable issues. Nevertheless, I believe the Commission would have better served its mandate if it instead focused on developing reliable research and/or a procedure to reach consensus on grounds for specific policy mechanisms in the absence of reliable research.

As previously stated, I am generally concerned about the international

"push and pull" dynamics triggering migration concerns. A major weakness in both our present approach and the Commission Report is the sole focus on American activities. This is particularly serious in regard to the undocumented work issue and present U.S. - Mexico relations. As Vernon Briggs once stated:

> Nowhere within the community of nations does a boundary separate two nations with greater economic disparity than that between Mexico and the United States. . .in 1972 the per capita income of the U.S. was $5,288; in Mexico it was $707.

This disparity is not going to diminish. According to *Comments and Quotes*, a publication for bank directors, "Mexico's most serious economic problem today is the inability of the economy to create sufficient employment to meet the need. Approximately 40 percent of the Mexican labor force either is unemployed or underemployed. This is bound to increase since approximately 45 percent of the population is under 16."

Faced with such limited—if not nonexistent—opportunities, thousands come to the United States, and southern California in particular, for jobs. From both a pragmatic and humanitarian viewpoint, we can only halt this influx if there are more jobs or greater benefits for those remaining in Mexico. Thus, while the Commission acknowledged the need for regional forums and international cooperation, the Report did not go far enough. Tax incentives, trade agreements and other economic tools should be an integral part of our immigration policy.

As you all know, the Commission did make some specific and controversial recommendations on which I would like to comment. My comments come under my earlier stated *caveat* that I think it is "bad business" to enact a policy before you either know the true situation or have concluded that the "truth" is "unknowable".

First, I support the concept that stricter enforcement must be accompanied by an amnesty or massive reclassification program. Further, I generally believe we need some stronger enforcement in the near future. I base this on a personal belief regarding the impact of undocumented workers and would be willing to modify this if a contrary and reliable analysis were produced. It is my sense that undocumented workers in Los Angeles have a generally positive impact on the economy. However, we are concerned about the population growth that will be generated by these undocumented residents and the state's declining ability to absorb new workers of any sort in the future. Therefore, some stricter enforcement is needed; but I would recommend a different approach. I believe that the U.S. has a partial obligation to the thousands of undocumenteds here

because of lax enforcement and an ambiguous legal code. As humanitarians we must "legalize" those who have lived here a long time—but also as humanitarians we must work to see tighter policies drafted and implemented.

In this regard, I agree with the Commission's conclusion that illegal migration is linked to available jobs and should be attacked through that means. However, I believe citing an employer for hiring an undocumented worker is impractical without a worker's identification card, which I cannot support at this point. Instead, the Commission should have approached the issue by attacking the incentives for hiring undocumented workers. Immigration enforcement should focus on enforcing other existing laws, from minimum wage requirements to OSHA and Social Security, until we more clearly articulate a direct immigration policy.

Further, due to the absence of this policy or any evidence to substantiate it, at this time I agree with the Commission's recommendation not to require identification cards of any sort. Again, we do not know if the economic situation necessitates such a drastic, unpopular and, to some, repressive action.

You can understand my reasoning for supporting tighter border enforcement and enforcement of wage laws and other incentives. However, I do this with a sense of caution: enforcement, especially border or employer tactics, should not be pursued piecemeal, but as part of a large program of policy reform. Stricter enforcement has been a popular yet ominous cry that has led to serious civil rights violations in our nation's history. I deeply hope that the new administration and congress will not interpret the Commission report, or my remarks, as a license for earlier programs such as Operation Wetback and others. I firmly believe that such an intensified effort is legitimate only if: 1) an amnesty program is introduced before tighter enforcement; 2) an augmented enforcement budget is available for a longer term effort; and 3) the U.S. and Mexico have developed a procedure to offer greater employment in Mexico.

Let me turn now to the refugee issues raised by the report. Generally, I support the nature and direction of the Commission's recommendations, and I was pleased to see the attention it received. We underwent almost a 500 percent increase in the monthly number of refugees coming to this country between 1978 and 1980. California has borne a major segment of the influx. That state has resettled a staggering 32 percent of the 360,000 Indochinese refugees in this country. Today California receives more than its proportional share of refugees just through the family reunification policy.

Given these numbers, it should not surprise anyone that I strongly support the Commission's recommendation to involve local governments in planning refugee assistance programs. My only concern with this recom-

mendation is that of how it is done and in what areas. Some additional attention to enacting a new process would therefore be useful.

This local involvement is important, both because of the obligations we have and the insights we can offer. For example, I was disturbed that the Commission's recommendations did not address concerns regarding refugee impacts on other resident minorities. This is an extremely important public policy issue. It attracted substantial discussion at the Conference of Mayors two day forum on refugee resettlement held in October 1981, and should not be overlooked. In fact, I believe this sort of local sensitivity is exactly what is needed in future refugee planning.

Local governments are also carrying several financial costs posed by refugees. The Commission Report recommendation to investigate impact aid for cities with large refugee populations is a good first step, but it's only a first step. Cities like Los Angeles and other "secondary targets" (that is, cities that have a large number of refugees relocating there from another city) deserve and need that money now. I hope that such impact aid is quickly forthcoming. Further, the next iteration of national refugee policy should include a substantial segment guiding secondary relocations, since the Commission Report virtually ignores this issue.

Lastly, I had a concern that some of the Commission's refugee recommendations were crafted for a time of somewhat freer local resources. I fear that the federal reimbursement of specified local costs may develop into a problem as local revenues are depleted and federal community development and social service monies are cut under the new administration.

In conclusion, I view the Commission's Report as a good early effort and a catalyst for policy resolution. However, without sufficient sustained interest, its contributions can be lost: it's up to us to insure it remains a viable and visible public issue.

Index

Abraham, K., 28
Alien and Sedition Act, 1978, 8
Alliance of National Committee for Full Employment, 42
American Bar Association, 83, 85, 86
American Express, 76
Archdiocese of Brooklyn, 116
Arizona, 18, 8
Arkansas, 84
Article I Courts, 85, 86
Asians, 2, 116
Australians, 5

Beard, R., 76
Bernsen, S., 41
Bevilacqua, A., 116
Board of Immigration Appeals, 69, 85, 94
Bracero Program, 19, 28
Brandt Commission, 21
Briggs, V., 19, 121
Buckley, W.F., 115
California, 18, 19, 114, 116, 122
Canadians, 2, 5, 14, 92
Carter, J., 73, 74, 79, 80, 84
Castro, Fidel, 5
CENIET, 30
Center for Migration Studies, 115
Central America, 30
Chicago, 19
Chinese, 18, 107
Clements, J., 42
Coelho, T., 76
Columbia, South Carolina, 105
Comments, and Quotes, 121
Communism, 89
Congressional Budget Office, 75
Congressional Research Service, 28
Conner, R., 83, 85
"Consular Absolutism", 12
Controls Over Nonimmigrant Aliens Remain Ineffective, 27, 30, 31
Cuban and Haitian Entrant program, 59
Cuban and Haitian Task Force, 58
Cubans, 2, 3, 5, 43, 58, 74, 78, 84
Curley, J., 3

Daniels, R., 18
U.S. Declaration of Independence, 106
Dept. of Labor Regulations, 29
Dirksen, E., 117
Discriminatory Effects of Employer Sanctions, Institute for Public Representation, 25
Domestic Policy Council, 80
Dominicans, 8, 116
Dunne, F.P., 3
The Effects of Proposal Legislation Prohibiting the Employment of Illegal Aliens on Small Business, 27
Eisenhower, D., 2
European Guestworker Program, 28, 105
Exxon Corporation, 67

Farm Labor Contractors Act, 27
Federal Wage and Hour Division, 111
Federation for American Immigration Reform, 73, 74, 75, 76, 77, 78, 84
Florida, 29, 84
Florida Dept. of Commerce, 29
Ford, G.T., 79, 80
Fort Chaffee, Arkansas, 59
Fortune, 2
Fuchs, L., 39-42

Georgetown University Law Center, 25
The Global 2000 Report, 21
Goldwater, B., 115
Great Britain, 106

Haitians, 43, 58, 78, 84, 107, 116
Health and Human Services, 57-61
Heritage foundation, 79
Hesburgh, T., 39, 113
Hillel, 105
Haltzman, E., 22, 23, 114, 116
House Judiciary Committee, 67
Houstoun, M., 102
Huddleston, W.D., 76, 80

Illinois, 19
Immigration and Nationality Act of 1965 (INA), 12, 13, 41, 42, 73, 88, 91
Immigration and National Security Act, 76, 80, 95
Immigration and Naturalization Service (INS), 13, 30-32, 33, 43, 63, 64, 65, 69, 75, 81, 85, 86, 94-96, 110, 113, 114
India, 33
Indochinese, 2

Institute of Public Representation, 25
Internal Revenue Service (IRS), 114
Internal Security Act, 88
International Ladies' Garment Workers' Union, 107, 112, 113
Iranians, 45, 47
Irish, 18
Italians, 116

Japanese, 8, 114
Jews, 6, 84, 103
Johnson, L.B., 2
Kansas, 19
Kennedy, J.F., 2
Kentucky, 80
Kisser, G.C., 19
Kisser, M.W., 19
Kitans, L., 18
Korea, 33, 107
Ku Klux Klan, 33

Le, C., 106
League of United Latin American Citizens (LULAC), 18
Library of Congress, 28
Los Angeles, 115, 120, 123

Malthus, 102
Mandate for Leadership, 79
Mazzoli, 115
McWilliams, C., 19
Medicare-Medicaid, 101
Medoff, J., 28
Mexican American Legal Defense and Educational Fund (MALDEF), 91-97
Mexican Labor Program, 19
Mexico (Mexicans), 3, 4, 14, 18, 20, 21, 30, 31, 32, 33, 34, 64, 65, 84, 91, 92, 95, 97, 103, 107, 115, 121, 122
Middle East, 2
Miller, M., 29
The Missing Nail, 76
Missouri, 18
Mariel Harbor, 5
Muskil, E., 21

NAACP v. Brennan, Civil No. 72-2010, 360 F. Supp. 1066, D.D.C. 1973:6, 29
Nahan, J.E., 67
National Origins Quotas System, 2
National Security Act, 77
Neal, L., 105
New Mexico, 18, 19
Newsweek, 77
New York City, 114, 115-117
New York Times, 33, 75, 76
North, D., 102
Notre Dame, 41

Occupational Safety and Health Act (OSHA), 26, 114, 122
Ochi, R.M., 32
Operation Wetback, 122
Otero, 115

Petersburg Times, 8
Philippines, 33
Piore, M., 20, 116
Poles, 116
Portillo, L., 42
Prospects Dim for Effectively Enforcing Immigration Laws, 27
Protestants, 3
Public Law 95-412, 17
Puerto Ricans, 72, 116

Reagan, R., 57, 85, 97, 114, 115, 117
Refugee Act of 1980, 5-6, 58, 78, 112
Reynoso, C., 17, 25, 32, 41
Ross, S.R., 29
Russians, 2, 103

Salvadorans, 107, 112
San Diego, 116
Schey, P.A., 29, 41, 66
Scully, R., 66
Second Report of Plaintiffs' Representatives on Brennan Special Review Committee, 29
Silva v. Levy, 52
Simon, R. 103
Simpson, A.K., 80, 115
Sinkin, R., 29
Social Security, 4, 65, 96, 101, 102, 122
South America, 30
State Dept. Current Policy No. 213, 21
Subcommittee on Immigration, Citizenship and International Law, 29
Supervisors Association, 75
Survey of Economic Opportunity, 101

Taiwan, 33
Teitelbaum, M., 113
Texas, 3, 18, 29, 33, 75, 116
The State Record, 105
Third World, 67
Toland, J., 100
Truman, H.S., 2

Undocumented Migration, 6-8, 19, 22-27, 29, 47, 65, 66, 70, 73, 74, 75, 76, 78, 79, 87, 94, 97, 100, 101, 108-109, 111, 112, 113, 114, 116, 119-112
United Nations (U.N.), 21, 6
U.S. Border Patrol, 18, 31, 75
U.S. Bureau of the Census, 30, 101
U.S. Circuit Court of Appeals, 85
U.S. Coast Guard, 75
U.S. Constitution, 95
U.S. Coordinator for Refugee Affairs, 58, 60
U.S. Dept. of Justice, 13, 27, 59, 71, 75, 85, 88, 94
U.S. Dept. of Labor, 13, 28, 29, 113
U.S. Dept. of State, 12, 13, 49-56, 59, 67, 68, 87, 88
U.S. District Court, 85
U.S. General Accounting Office, 27, 29
U.S. Supreme Court, 85, 87, 88

Vietnamese, 2, 3, 81, 84, 103, 105
VISA, 76

Wachter, M., 19
Washington Post, 76
Weintraub, S., 29
West Indians, 116
World War II, 2, 6, 8, 114

Yeres, D., 29

Zazueta, C.H., 20, 21